



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

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Date Mailed: November 27, 2018
MAHS Docket No.: 18-007828
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on November 7, 2018, from Detroit, Michigan. The Department was represented by Derrick Gentry, Regulation Agent of the Office of Inspector General (OIG). The Respondent was self-represented.

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from receiving benefits for Food Assistance Program (FAP)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on July 18, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG **has** requested that Respondent be disqualified from receiving program benefits.

3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent **was** aware of the responsibility to report changes in household circumstances which affect eligibility to the Department.
5. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time it is considering the fraud period is February 13, 2017, through April 30, 2017 (fraud period).
7. During the fraud period, Respondent was issued \$[REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. Petitioner received food assistance benefits from Tennessee for December 2016 through April 2017.
9. Respondent signed a Repayment Agreement agreeing to pay back \$[REDACTED] to the Department for overissued benefits.
10. This was Respondent's **first** alleged IPV; however, the Department is seeking a ten-year disqualification as a result of concurrent receipt of food assistance benefits.
11. A notice of hearing was mailed to Respondent at the last known address and **was not** returned by the United States Postal Service as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500 or more under the AHH program.
- FAP trafficking overissuances that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, or
 - the total amount is less than \$500, and
 - the group has a previous IPV, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee.

BAM 720 (October 2017), pp. 5, 12-13; ASM 165 (August 2016).

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities.

BAM 700 (January 2018), p. 8; BAM 720, p.1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p. 1 (emphasis in original); see also 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, the Department alleges that Respondent committed an IPV of the FAP because she received concurrent benefits from Michigan and Tennessee and failed to update her residency with the Department after she moved but continued to use her Michigan-issued FAP benefits.

Federal Regulations provide with respect to FAP recipients residency requirements that:

- (a) *A household shall live in the State in which it files an application for participation.* The State agency may also require a household to file an application for participation in a specified project area (as defined in § 271.2 of this chapter) or office within the State. *No individual may participate as a member of more than one household or in more than one project area, in any month, unless an individual is a resident of a shelter for battered women and children as defined in § 271.2 and was a member of a household containing the person who had abused him or her.* Residents of shelters for battered women and children shall be handled in accordance with § 273.11(g). *The State agency shall not impose any durational residency requirements.* The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. *Nor shall residency require an intent to reside permanently in the State or project area.* Persons in a project area solely for vacation purposes shall not be considered residents.

7 CFR 273.3 (emphasis added). Based upon the above residency federal regulation, there is no requirement that an eligible household reside in Michigan, except at the time of application. In addition, there is no requirement that residency be based upon the recipient's intent to reside permanently in Michigan.

BEM 220 requires that a person be a Michigan resident for FAP eligibility and provides that a person is a resident while living in Michigan for any purpose other than a vacation even if there is no intent to remain in the state permanently or indefinitely. BEM 220

(January 2016), p. 1. In order to comply with the federal regulations, this rule can only apply at application.

The Department has utilized BEM 212 to establish a loss of residency, but it does not discuss residency, the policy discusses the removal of an individual from a group. BEM 212 (January 2017), p. 3. For BEM 212 to be in compliance with federal regulations, it cannot apply to the residency requirement. BEM 212 can only apply to the assist the Department in defining who belongs in a group, especially because after application, there is no federal requirement to maintain a residence in a specified state. A FAP recipient is free to use their FAP benefit in any state. So long as there was no misrepresentation of residency at the time of application, there can be no IPV for failure to maintain Michigan residency or failure to inform the Department about a change in residency because it does not affect eligibility.

The Department presented three Michigan FAP applications submitted by Respondent on October 12, 2015; September 19, 2016; and February 10, 2017. No evidence was presented to show that Petitioner was not a Michigan resident at the time of any of her FAP applications. The Department's only evidence was that Respondent received Tennessee issued food assistance benefits from December 2016 through April 2017 and that Respondent used her Michigan-issued FAP benefits in Tennessee on one day, but then resumed her use in Michigan the next day. No application from Tennessee was presented. Based upon the evidence presented, it is just as likely that Respondent was living in Tennessee as it is that she was living in Michigan when she submitted her February 2017 application. Therefore, the Department has not met its burden of proof in establishing an IPV based upon a misrepresentation of residency on her February 2017 application.

As seen above in the Federal Regulation, food assistance clients are not allowed to receive food benefits in more than one place at the same time. The same rule is seen in BEM 222 (October 2016), p. 3. An individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple SNAP benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years. 7 CFR 273.16(b)(5); BEM 720 (January 2016), pp. 5, 13, 14, 16. As discussed above, the evidence presented is insufficient to determine where Respondent was residing. Her February 2017 application suggests she was living in Michigan. Her receipt of Tennessee food assistance benefits suggests, albeit to a slightly lesser degree that she was a resident of Tennessee. Therefore, the Department has not met its burden of proof in establishing an IPV based upon a misrepresentation of identity or residency.

Finally, it should be noted that Respondent informed the Department on her February 2017 application that she was already receiving food assistance benefits for the month. (Exhibit A, p. 71.) She further informed the Department that she had been receiving food assistance benefits from the State of Tennessee effective December 9, 2016, but that she had moved back to Michigan effective February 7, 2017. (Exhibit A, p. 80).

Therefore, Respondent did not commit an IPV by failing accurately answer all questions on her application nor did she misrepresent her residency or identity. The Department should have seen this information on the application and acted in conjunction with the State of Tennessee to ensure that Respondent did not receive dual benefits.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15. Clients are disqualified for 10 years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16; 7 CFR 273.16(b)(1) and (5). A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

As discussed above, the Department has not established by clear and convincing evidence that Respondent committed an IPV by misrepresenting her residency, identity, or falsifying other application information in order to obtain more benefits than she was entitled to receive. Therefore, Respondent is not subject to a period of disqualification from the FAP.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department **has not** established by clear and convincing evidence that Respondent committed an IPV.

IT IS ORDERED that Respondent is not subject to a period of disqualification from the FAP.

AMTM/



Amanda M. T. Marler
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

LaClair Winbush
MDHHS-Wayne 31-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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