



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] FL [REDACTED]

Date Mailed: December 7, 2018
MAHS Docket No.: 18-009188
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on November 8, 2018, from Lansing, Michigan. The Department was represented by Kelvin Christian, Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Department establish by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from the 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. On a Mid-Certification Contact Notice (DHS-2240-A) received by the Department on February [REDACTED] 2016, Respondent certified that the statements on that form were true and correct to the best of his knowledge. Exhibit A, pp 10-12.
2. Respondent wrote "No Change" next to his Detroit, Michigan address on his February [REDACTED] 2016, Mid-Certification Contact Notice form. Exhibit A, p 10.

3. Respondent acknowledged under penalties of perjury that his Redetermination (DHS-1010) form received by the Department on March [REDACTED] 2017, was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Exhibit A, pp 13-20.
4. Respondent starting using Food Assistance Program (FAP) benefits in Florida on November [REDACTED] 2016, and used them exclusively in Florida through April 7, 2017. Exhibit A, pp 22-25.
5. Respondent failed to report to the Department that he received earned income from employment from November 11, 2016, through February 7, 2017, while reporting a Florida address to his employer. Exhibit A, pp 28-31.
6. Respondent received Food Assistance Program (FAP) benefits totaling \$[REDACTED] from November 1, 2016, through January 31, 2017. Exhibit A, p 37.
7. On August [REDACTED] 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$[REDACTED] overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-8.
8. The Department's OIG filed a hearing request on [REDACTED] [REDACTED] [REDACTED] to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
9. This was Respondent's first established IPV.
10. 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), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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-.3011.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs 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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, or
 - the total OI 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.

Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (January 1, 2016), pp 12-13.

Overissuance

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (January 1, 2018), p 1.

To be eligible for FAP benefits, a person must be a Michigan resident. A person is considered a resident under the FAP 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. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (April 1, 2018), pp 1-2. The Department is prohibited from imposing any durational residency requirements on the eligibility for FAP benefits. 7 CFR 273.3(a).

State agencies must adopt uniform standards to facilitate interoperability and portability nationwide. The term "interoperability" means the EBT system must enable benefits issued in the form of an EBT card to be redeemed in any state. 7 CFR 274.8(b)(10).

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (January 1, 2018), p 12. The Department will act on

a change reported by means other than a tape match within 15 workdays after becoming aware of the change, except that the Department will act on a change other than a tape match within 10 days of becoming aware of the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (January 1, 2018), p 7. A pending negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p 12.

Respondent was a FAP recipient on November [REDACTED] 2016, when he began using his FAP benefits in Florida. Respondent used his FAP benefits exclusively in Florida from November 22, 2016, through April 7, 2017.

The Department alleged that Respondent failed to report that he was no longer living in Michigan from November of 2016, through January of 2017, based on his exclusive use of his benefits in Florida, his lack of presence in Michigan, and his apparent unreported employment in Florida.

However, if Respondent had reported that he was living in Florida within ten days of his first use of his FAP benefits in Florida, then the Department would have closed his FAP benefits by the first benefit period after December 24, 2016. Assuming that Respondent had a duty to report his presence in Florida, his failure to fulfill this duty did not cause him to receive an overissuance of FAP benefits in November and December of 2016. In January of 2017, Respondent received FAP benefits totaling \$[REDACTED]

This Administrative Law Judge finds that the Department failed to establish that Respondent received an overissuance of FAP benefits in November and December of 2016, based on a failure to report a change of residency. The Department failed to establish an overissuance of FAP benefits for January of 2017, that meets the threshold of overissuance to establish an Intentional Program Violation as directed by BAM 720.

The Department has not established an Intentional Program Violation (IPV).

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.
2. The Department is ORDERED to delete the OI and cease any recoupment action.

KS/hb



Kevin Scully
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

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

DHHS

Richard Latimore
4733 Conner
Detroit, MI 48215

Wayne County (District 57), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Respondent

[REDACTED]
[REDACTED]
[REDACTED] FL [REDACTED]