



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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██████ IN ██████

Date Mailed: December 20, 2018
MAHS Docket No.: 18-010845
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████ ██████

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

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 Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on December 13, 2018, from Lansing, Michigan. The Department was represented by Brian Siegfried, Regulation Agent of the Office of Inspector General (OIG). Respondent, ██████ ██████ did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

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 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 ██████ ██████ 2017, Respondent applied for assistance from the Department, including FAP benefits. In the application, the Department instructed Respondent to report all changes which could affect his eligibility for benefits to the Department within 10 days of the date of the change, including changes in address and moves. In a Notice of Case Action sent to Respondent the same day, the Department

provided Respondent with a blank Change Report so that he could report changes at any time.

2. Respondent did not have any apparent physical or mental impairment that would have limited his understanding or ability to fulfill his reporting requirement.
3. On March 27, 2018, Respondent applied for assistance from the State of Indiana, including FAP benefits. In Respondent's application, Respondent reported to Indiana that he was living in Indiana.
4. Both the Department and Indiana issued FAP benefits to Respondent from March 2018 through August 2018.
5. From March 27, 2018, through August 2, 2018, all of Respondent's EBT transactions for his Michigan FAP benefits were completed in Indiana.
6. Respondent did not report to the Department that he had a change in address or that he moved.
7. The Department investigated Respondent's case and determined that he was issued FAP benefits concurrently by the Department and Indiana.
8. The Department attempted to contact Respondent to obtain an explanation for his concurrent receipt of benefits, but Respondent did not respond to the Department's attempts.
9. On October 10, 2018, the Department's OIG filed a hearing request to establish that Respondent committed an IPV and that Respondent owes the Department a debt for benefits overissued.
10. The Department requested Respondent be disqualified from receiving program benefits for 10 years for a first IPV involving the concurrent receipt of benefits, and the Department requested the establishment of a debt of \$1,122.00 for the value of benefits overissued from March 2018 through August 2018.
11. A notice of hearing was mailed to Respondent at his last known address and it was not returned by the United States Postal Service as undeliverable.

CONCLUSIONS OF LAW

The Supplemental Nutrition Assistance Program (SNAP) is a federal food assistance program designed to promote general welfare and to safeguard well-being by increasing food purchasing power. 7 USC 2011 and 7 CFR 271.1. The Department administers its Food Assistance Program (FAP) pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015. Department policies

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

Overissuance

A recipient claim is an amount owed because of benefits that were overpaid or benefits that were trafficked. 7 CFR 273.18(a)(1). When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (January 1, 2018), p. 1.

Only a resident of Michigan is eligible for assistance from the Department. BEM 220 (April 1, 2018), p. 1. For FAP, an individual is a resident if he lives in Michigan for any purpose other than a vacation, regardless of whether he has an intent to remain permanently. BEM 220, p. 1. An individual cannot receive FAP benefits from more than one state for the same month. BEM 222 (October 1, 2016), p. 3. A negative action must take effect no later than the month after the change when there is reliable information that a group has left the state. BAM 220 (July 1, 2018), p. 5.

Here, the Department alleged that Respondent was overissued \$1,122.00 in FAP benefits from March 2018 through August 2018, but the Department did not present sufficient evidence to establish an overissuance in the amount alleged. Specifically, the Department did not present any evidence to establish that Respondent was overissued benefits beginning in March 2018. Since Respondent moved on March 27, 2018, Respondent's benefits should not have been affected until April 2018 at the earliest because Respondent was in Michigan most of the month of March and he had 10 days to report his move to the Department. BAM 105 (January 1, 2018). The FAP benefits that were issued to Respondent from April 2018 through August 2018 were overissued because Respondent was not a resident of Michigan during those months and only a resident of Michigan is eligible for benefits from the Department. The amount overissued was \$960.00.

Intentional Program Violation

An intentional program violation (IPV) "shall consist of having intentionally: (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards." 7 CFR 273.16(c). 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. 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence which is so clear, direct, weighty, and convincing that it enables a firm belief as to the truth of the allegations sought to be established. *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (citing *In re Jobes*, 108 NJ 394 (1987)).

In this case, I find that the Department has met its burden. Respondent was required to report changes in his circumstances to the Department within 10 days of the change. 7 CFR 273.12(a)(2). The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days, including changes in his address and moves. Respondent failed to report that he moved to Indiana within 10 days of the date he moved. Respondent did not provide any explanation for his inaction. Respondent's failure to report this change to the Department must be considered an intentional misrepresentation to maintain or obtain benefits from the Department since Respondent knew or should have known that he was required to report the change to the Department and that reporting the change to the Department would have caused his benefits to cease. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his reporting requirement.

Disqualification

In general, individuals found to have committed an intentional program violation through an administrative disqualification hearing shall be ineligible to participate in FAP: (i) for a period of 12 months for the first violation, (ii) for a period of 24 months for the second violation, and (iii) permanently for a third violation. 7 CFR 273.16(b)(1). An individual found to have committed an intentional program violation with respect to his identity or place of residence in order to receive benefits from more than one state concurrently shall be ineligible to participate in FAP for 10 years. 7 CFR 273.16(b)(5). Only the individual who committed the violation shall be disqualified – not the entire household. 7 CFR 273.16(b)(11).

In this case, I find that the Department has met its burden. Respondent misrepresented his residence to the Department when he failed to report his change in address after he moved to Indiana. The Department had advised Respondent to report changes in his address to the Department, so Respondent knew or should have known that he was supposed to report the change to the Department. The Department continued to issue FAP benefits to Respondent because he did not report his change in address. Respondent then claimed and received FAP benefits from Indiana while he was receiving benefits from the Department. Respondent received FAP benefits from both the Department and Indiana concurrently from March 2018 through August 2018. Respondent's actions must be considered an intentional misrepresentation of his residence to obtain FAP benefits concurrently from more than one state. Therefore, Respondent is subject to a 10-year disqualification.

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. Respondent received an overissuance of \$ [REDACTED] in FAP benefits that the Department is entitled to recoup.
2. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.
3. Respondent should be disqualified from FAP.

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$ [REDACTED] in FAP benefits in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall be disqualified from FAP for a period of 10 years.

JK/nr



Jeffrey Kemm
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

Kim Cates
1399 W. Center Road
Essexville, MI
48732

Bay County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

[REDACTED]
[REDACTED] IN
[REDACTED]