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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

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Date Mailed: January 17, 2020
MOAHR Docket No.: 19-009558
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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 January 15, 2020 from ██████████ Michigan. The Department was represented by Stephanie Janowiak, Regulation Agent of the Office of Inspector General (OIG). The Respondent was self-represented.

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 receiving benefits for the 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 August 27, 2019 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by failing to report a change in residency.

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 period it is considering the fraud period is August 2018 through October 2018 (fraud period).
7. During the fraud period, Respondent was issued \$576.00 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. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$576.00.
9. This was Respondent's **first** alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was returned by the United States Postal Service as undeliverable; despite the returned mail, Respondent appeared at the hearing and confirmed that the mailing address used for the notice was the correct mailing address.

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 \$500.00 or more under the AHH program.
- 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500.00 or more, or
 - the total amount is less than \$500.00, 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 (October 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, misrepresented information, or withheld facts or committed any act constituting a violation of Supplemental Nutritional Assistance Program (SNAP) regulations or State statutes for the **purpose** of establishing, maintaining, using, presenting, transferring, receiving, possessing, trafficking, increasing or preventing reduction of program benefits or eligibility. BAM 720, pp. 1, 12-13 (emphasis in original); 7 CFR 273.16(c) and (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 seeks an IPV due to the Petitioner's out-of-state use of his Michigan FAP benefits alleging that Petitioner failed to report his change in residency outside of Michigan; thus, he was not entitled to Michigan FAP benefits and his commission of an IPV.

In support of its allegations the Department presented an IG-301 FAP transaction history to establish that Respondent used all of his Michigan-issued FAP benefits exclusively outside the State of Michigan from May 18, 2018 through October 12, 2018, with the exception of two transactions. During this period, Respondent used his Michigan-issued FAP benefits in Georgia. After determining that Respondent had out-of-state usage, the Department confirmed via a lease agreement and a Clear Report that Respondent had become a resident of Georgia. The lease agreement showed that effective June 1, 2018, Respondent was a tenant of a rental unit in ██████████ Georgia. The Clear Report shows that Respondent activated utilities at the same address in ██████████ Georgia on June 7, 2018. Finally, prior to the fraud period, Respondent completed a Redetermination for FAP benefit indicating he lived in ██████████ Michigan as of October 23, 2017. After the Redetermination, the Department issued a Notice of Case Action on October 31, 2017 and reminded Respondent of the obligation to report changes in household circumstances which affect eligibility to the Department. On May 4, 2018, Respondent submitted a Change Report to the Department indicating he was homeless. Four days later on May 8, 2018, the Department issued a Notice of Case Action which again reminded him of the obligation to report changes which affect eligibility.

Federal Regulations provide with respect to FAP recipient's 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. The Department evidence shows that Respondent was present in Michigan at the time of his Redetermination and no evidence was presented that he was not a resident at the time of his initial Application. The Department's evidence also shows that even when Respondent reported that he was homeless, he was still living in Michigan. The Department cited no federal requirement or regulation that prohibits out of state use of Michigan FAP benefits by a recipient nor did the Department cite a federal requirement or regulation which prohibits Respondent's continued receipt of benefits even if he has lost his Michigan residency in the middle of a benefit period.

Department policy 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 (April 2018), p. 1. In order to be in compliance with the federal regulations, this rule can only apply at application. No evidence was presented that Respondent lacked Michigan residency during the actual months of his Application. The only evidence presented was that in the months following his Redetermination, he had lost his Michigan residency. Department policy BEM 212 also defines a temporary absence from a group as having lasted or expecting to last 30 days or less. BEM 212 (January 2017), p. 3. The Department has utilized BEM 212 to establish a loss of residency, but it does not discuss residency, the policy discusses a removal from a group. In order for BEM 212 to be in compliance with federal regulations, it cannot apply to residency. BEM 212 can only apply to the group, especially because after application, there is no federal requirement to maintain a residence in any given 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.

Based upon the foregoing, the Department has not established that Respondent committed an IPV of the FAP program by clear and convincing evidence based upon a failure to report a change in residency in the FAP.

Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16. Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA or FAP. BAM 720, p. 13. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

As discussed above, the Department has not satisfied its burden of proof in establishing an IPV of the FAP. Therefore, the Respondent is not subject to a period of disqualification from the FAP.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6; 7 CFR 273.18(c)(1).

In this case, the Department sought the imposition of an IPV and OI due to Respondent's lack of Michigan residency. As discussed above, the Department failed to establish that Respondent was ineligible for FAP due to lack of residency, and did not establish an IPV. FAP clients are permitted the use of their FAP EBT benefits anywhere that SNAP benefits are accepted. Therefore, the Department has not established an OI or that the Respondent received more benefits than he was entitled to receive.

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. Respondent **did not** receive an OI of FAP benefits.

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

