



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: July 13, 2018
MAHS Docket No.: 18-000831
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 July 10, 2018, from Lansing, Michigan. The Department was represented by [REDACTED], 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). During the hearing, 54 pages of documents were offered and admitted into evidence as Department's Exhibit A, pages 1-54.

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 FAP benefits?

FINDINGS OF FACT

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

1. Respondent was a recipient of FAP benefits issued by the Department in a group size of one.
2. No other person was authorized to use Respondent's FAP benefits.

3. Respondent was aware of the responsibility to report any changes in his living arrangements within ten days of the change and that being incarcerated rendered one ineligible for the receipt of FAP benefits.
4. Respondent was further aware that he was prohibited from allowing anyone other than himself to use his PIN or FAP benefits.
5. Respondent did not have an apparent physical or mental impairment that would limit his understanding or ability to fulfill these requirements.
6. From December 15, 2015, through April 6, 2016, Respondent's EBT card was used to make \$742.00 of purchases.
7. The Department's OIG filed a hearing request on January 30, 2018, to establish an OI of benefits received by Respondent, as a result of Respondent having allegedly committed an IPV.
8. The OIG requested that Respondent be disqualified from receiving FAP benefits.
9. The OIG considered benefits issued to Respondent from December 1, 2015, through April 30, 2016, totaling \$742.00 fraudulent and is seeking recoupment of the full \$742.00 alleged overissuance.
10. The OIG based its decision on its belief that Respondent was incarcerated from December 15, 2015, through April 4, 2016.
11. The competent evidence on the record does not support a finding that Respondent was incarcerated from December 15, 2015, through April 4, 2016.
12. Respondent did not have an apparent physical or mental impairment that would limit his understanding or ability to fulfill this requirement.
13. This was Respondent's first alleged IPV.
14. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services 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), 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.

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, p.6; 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(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 by collecting FAP benefits while incarcerated in a location that provides meals and trafficking his benefits during the same time period. The Department has shown that \$742.00 of purchases were made using Respondent's card from December 15, 2015, through April 6, 2016, in locations all around the Detroit Metropolitan area. Further, the Department has shown that Respondent never informed the Department that he was incarcerated, which he would be required to do within ten days as it is a factor that would impact Respondent's eligibility for FAP benefits.

Thus, if the Department substantiated its allegation that Respondent was, in fact, incarcerated during that time period, this would certainly be an IPV. Necessarily, Respondent would have had to traffic his benefits as he was the only one authorized to use his card, he was incarcerated, and the card was used in locations other than where he was incarcerated. Further, Respondent's failure to update his information with the Department probably would qualify as an IPV.

In support of its allegation, the Department offered testimony from [REDACTED] and emails between [REDACTED] and one [REDACTED] at [REDACTED]. In response to a query regarding Respondent's dates of incarceration, [REDACTED] stated in January 9, 2018, email: [REDACTED] dob [REDACTED]/1987 booked on 12/15/15 released on 4/4/16." [REDACTED] further testified that at some undetermined point after this issue arose, she spoke with Respondent. When asked about that conversation, [REDACTED] repeatedly stated that Respondent did not deny that he was incarcerated. At no point did [REDACTED] testify that Respondent admitted to any particular period of incarceration.

I find that the Department failed to provide clear and convincing evidence to establish that Respondent was in fact incarcerated during the alleged fraud period. The hearsay statement from [REDACTED] in his email to [REDACTED] was created in contemplation of this hearing and is the sole basis to conclude that Respondent was incarcerated from December 15, 2015, through April 4, 2016. That email and [REDACTED] testimony are not sufficient to convince the undersigned that Respondent was in fact incarcerated for any period of time in late 2015, and early 2016. As the Department failed to establish that Respondent was incarcerated, it necessarily has failed to meet its ultimate burden of proof in this matter. Thus, Respondent did not commit an IPV.

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. 15-16. In general, clients are disqualified 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. 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.

In this case, the Department did not establish that Respondent committed an IPV. Thus, Respondent is not subject to a disqualification.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. In this case, the Department has not shown that Respondent received more benefits than he was entitled to receive. Thus, there was no OI of benefits.


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 program benefits.
3. Respondent is not disqualified from receiving FAP benefits.

IT IS ORDERED that Respondent is not disqualified from receiving FAP benefits.

JM/bb


John Markey
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

Latasha McKinney-Newell
26355 Michigan Ave.
Inkster, MI 48141

Wayne County (District 19), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED]