



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 12, 2018
MAHS Docket No.: 18-005257
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 September 11, 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). During the hearing, 47 pages of documents were offered and admitted as Department's Exhibit A, pages 1-47.

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. On [REDACTED] 2016, Respondent applied for FAP benefits from the Department. Exhibit A, pp. 10-20.

2. On the application, Respondent indicated that he was homeless with a mailing address in Grand Rapids, Michigan. Exhibit A, p. 12.
3. By signing the application, Respondent certified that he received, reviewed, and understood the information contained within the DHHS publication titled "Important Things to Know" (also known as DHS-Pub-1010). Exhibit A, p. 20.
4. DHS-PUB-1010 advises clients that they must report changes impacting eligibility within 10 days from the change and that failure to do so violated the law and if proven, would result in criminal and/or civil penalties, including disqualification from the program.
5. Sometime in early 2017, Respondent moved to Texas. Exhibit A, pp. 22-23, 26-44.
6. From February 19, 2017, through at least July 1, 2017, Respondent's EBT card was used exclusively at locations in Texas. Exhibit A, pp. 22-23.
7. On ██████ 2017, Respondent submitted an application for food benefits from the State of Texas. Exhibit A, pp. 26-44.
8. On Respondent's ██████ 2017, Texas application, Respondent indicated that he lives in Texas, plans to stay in Texas, and has no plan to return to Michigan. Exhibit A, p. 29.
9. From April 1, 2017, through June 30, 2017, the Department issued Respondent \$582 in FAP benefits. Exhibit A, pp. 46-47.
10. The Department's OIG filed a hearing request on April 30, 2018, to establish an OI of FAP benefits received by Respondent when he was not a Michigan resident from April 1, 2017, through June 30, 2017, totaling \$582. Exhibit A, pp. 1-8.
11. The OIG considered Respondent's failure to report his move to Texas an IPV and requested that Respondent be disqualified from receiving FAP benefits for a period of 10 years on the basis of Respondent allegedly receiving benefits in both Texas and Michigan during the months of April, May, and June of 2017. Exhibit A, pp. 1-8.
12. Respondent did not have an apparent physical or mental impairment that would limit his understanding or ability to fulfill his reporting responsibilities.
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), 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.

Overissuance

Only residents of Michigan are eligible to receive benefits from the Department. BEM 220 (January 1, 2016), page 1. When an ineligible client is issued benefits or an eligible client is issued more benefits than the client is entitled, the Department must attempt to recoup the OI. BAM 700 (January 1, 2016), page 1.

In this case, the Department showed by clear and convincing evidence that Respondent was not a Michigan resident as of April of 2016, at the latest. Respondent not only had an uninterrupted streak of purchases all in Texas, but he also represented on a Texas application for food benefits that he did not live in Michigan. Rather, Respondent was a Texas resident.

Thus, Respondent was no longer a Michigan resident and was ineligible to receive benefits. However, because of Respondent's failure to report his move to Texas, the Department issued FAP benefits of \$582 from April of 2017 through June of 2017. As Respondent was ineligible to receive those benefits, they are considered an OI, and Respondent must pay them back.

Intentional Program Violation

The Department's policy in effect at the time of Respondent's alleged IPV defined an IPV as an overissuance in which the following three conditions exist: (1) the client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination; (2) the client was clearly and correctly instructed regarding his or her reporting responsibilities; and (3) the client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill his or her reporting responsibilities. BAM 720 (January 1, 2016) page 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; see also 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, the Department has met its burden. Respondent was required to report changes in his circumstances to the Department within 10 days of the date of the change. BAM 105 (April 1, 2016), pages 11-12. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent failed to report that he moved out of state within 10 days of the date he moved. Respondent's failure to report this change to the Department must be considered an intentional misrepresentation to maintain his FAP benefits 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 the Department to stop issuing him FAP benefits. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his reporting requirement.

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, pages 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, page 16.

In this case, there is no evidence that Respondent has ever been found to have committed an IPV related to FAP benefits. Thus, this is Respondent's first IPV related to FAP benefits. Therefore, Respondent is subject to a one-year disqualification from receiving FAP benefits.

The Department has argued that Respondent should be disqualified from receiving FAP benefits for a period of 10 years based on allegedly receiving concurrent benefits in both Michigan and Texas. The Department did prove that he applied for benefits in Texas. However, the Department failed to meet its burden of proving that Respondent, in fact, received any benefits in Texas. In support of its assertion of concurrent benefits, the Department presented an email statement allegedly from a Texas official who confirmed that Respondent received benefits. That email is neither the best evidence of Texas having issued Respondent benefits nor is it reliable given the hearsay nature of the email. On the record presented, the undersigned finds that the Department failed to meet its burden of showing by clear and convincing evidence that Respondent received benefits in both Michigan and Texas. Thus, Respondent is not subject to the 10 year concurrent benefit disqualification.

DECISION AND ORDER

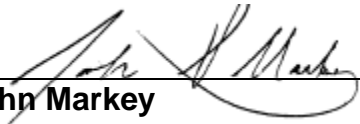
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of FAP benefits in the amount of \$582 that the Department is entitled to recoup and/or collect.
2. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to his FAP benefits.
3. Respondent is subject to a one-year disqualification from receiving FAP benefits.

IT IS ORDERED that the Department may initiate recoupment and/or collection procedures for the total overissuance amount of \$582 established in this matter less any amounts already recouped or collected.

IT IS FURTHER ORDERED that Respondent shall be disqualified from receiving FAP benefits for a period of one year.

JM/dh



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

Kimberly Kornoelje
121 Franklin SE
Grand Rapids, MI 49507

Kent County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED]