



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: November 30, 2018
MAHS Docket No.: 18-007878
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 October 30, 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, 80 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-80.

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 received FAP benefits from the State of Tennessee starting in January of 2009. Exhibit A, p. 72.

2. On [REDACTED] 2016, Respondent filed with the Department an application for FAP benefits. Exhibit A, pp. 11-39.
3. By signing the application, Respondent certified that he received, reviewed, and understood the information contained within the DHHS publications titled "Important Things to Know" and "Things you Must Do." Respondent's signature also certified that all information contained within the application was truthful. Respondent further certified that he understood he could face criminal and/or civil penalties, including disqualification from future benefits, if he intentionally provided false information. Exhibit A, pp. 11-39.
4. "Things You Must Do" and "Important Things to Know" advised Respondent that he was required to report any changes in address or moving out of the State of Michigan within 10 days and that an intentional failure to do so violated the law and if proven, would result in criminal and/or civil penalties, including disqualification from the program. Exhibit A, pp. 22, 29.
5. Respondent was also advised on the application that if he was found to have lied about where he lives in order to receive benefits on two or more cases at the same time, he would be disqualified from receiving FAP benefits for 10 years. Exhibit A, p. 29.
6. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his responsibilities to the Department.
7. On Respondent's application for FAP benefits, Respondent indicated that he was homeless. Exhibit A, p. 13.
8. Respondent's Michigan FAP application was approved, and the Department issued Respondent FAP benefits each month from November of 2016 through July of 2017. Exhibit A, pp. 78-80.
9. On [REDACTED], 2018, Respondent filed with the Department an application for FAP benefits. The [REDACTED], 2018, FAP application contained the same instructions, certifications, and warnings as the November 4, 2016, application. Respondent certified on two places in the application that he was not receiving an FAP benefits from any other state. Exhibit A, pp. 40-69.
10. Respondent's Michigan FAP application was approved, and the Department issued Respondent FAP benefits for the month of July 2018. Exhibit A, pp. 78-80.
11. In the month of July of 2018, Tennessee also issued to Respondent FAP benefits. Exhibit A, p. 72.
12. The Department's OIG filed a hearing request on July 24, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly

committed an IPV by concurrently collecting FAP benefits from Michigan and another state (or two).

13. This was Respondent's first alleged IPV.
14. The OIG requested that Respondent be disqualified from receiving FAP benefits for a period of 10 years.
15. The Department's OIG indicates that the time period it is considering the fraud period is November 4, 2016, through July 31, 2017 (fraud period), and July 1, 2018, through July 31, 2018, during which time Respondent was issued \$673 in FAP benefits.
16. 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.

The Department's position in this matter is that Respondent misrepresented his residency while concurrently collecting benefits in Michigan, Tennessee, and Ohio. The Department believes Respondent's actions constituted an IPV for which the penalty is a 10-year disqualification from receiving FAP benefits.

Overissuance

Only residents of Michigan are eligible to receive benefits from the Department. BEM 220 (January 2016), p. 1. Furthermore, a person cannot receive FAP benefits in more than one state for any month. BEM 222 (October 2016), p. 3. 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 (October 2016), p. 1.

In this case, the Department showed by clear and convincing evidence that Respondent was not a Michigan resident in July of 2018. Furthermore, the Department has shown by clear and convincing evidence that Respondent received FAP benefits from both Michigan and Tennessee for that month. Thus, in July of 2018, Respondent was

already receiving FAP benefits from at least one other state, rendering Respondent ineligible for the Michigan FAP benefits.

However, because Respondent concealed the fact that he was receiving benefits from another state from the Department, the Department issued Respondent FAP benefits totaling \$15 in July of 2018. As Respondent was ineligible to receive those benefits, they are considered an OI.

However, with respect to the earlier alleged fraud period, the Department has not met its burden of proving that Respondent received an overissuance from November 4, 2016, through July 31, 2017. The Department's position is that Respondent was receiving benefits from Tennessee during that entire time period and lived in Ohio from February 18, 2017, through at least July of 2017. The evidence presented by the Department is insufficient to reach a conclusion either that Respondent was receiving any benefits from any other state or that he was living in any other state. In support of its contention that Respondent was receiving benefits from Tennessee, the Department presented a one-page correspondence indicating that Respondent had an open FAP case in 2009 to present. However, that does not indicate whether he actually received anything during any of the relevant months. Also, the only evidence presented to show that Respondent lived in Ohio during that time period is Respondent's FAP usage history showing exclusive use of his FAP benefits in Ohio. That, by itself, is not sufficient to show by clear and convincing evidence that Respondent had relocated his residence outside of Michigan. Thus, the Department is reversed with respect to its finding of an overissuance of FAP benefits from November 4, 2016, through July 31, 2017.

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 2016) 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; 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. The evidence shows that Respondent engaged knowingly misrepresented his status as a recipient of FAP benefits in

Tennessee when he submitted the [REDACTED] 2018, FAP application to the Department. On the applications he filled out, Respondent certified that his statements were true and acknowledged the penalties for making false statements. Yet Respondent made clear misrepresentations regarding his residency and receipt of benefits from other states. Clearly, Respondent was simply attempting in a fraudulent manner to get as many benefits from as many states as he could. Respondent did not appear at the hearing to provide any explanations for his dishonest and fraudulent statements. 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, pp. 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. Clients are disqualified for a period of 10 years for concurrent receipt of benefits if fraudulent statements were made regarding identity or residency. BAM 720, p. 16.

In this case, Respondent committed an IPV that resulted in concurrently receiving benefits from Michigan and another state. Respondent concurrently received benefits from Michigan and Tennessee in July of 2018. Respondent made numerous fraudulent statements regarding his residency when filling out the paperwork required to obtain those benefits. Thus, Respondent is subject to a 10-year disqualification from receiving FAP benefits.

DECISION AND ORDER

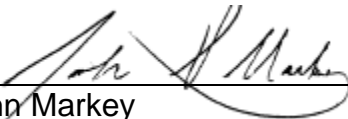
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of FAP benefits in the amount of \$15 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 10-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 \$15 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 10 years.

JM/nr



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

Lindsay Miller
125 E. Union St 7th Floor
Flint, MI 48502

Genesee Union St. 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]
[REDACTED]