



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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Date Mailed: October 24, 2018
MAHS Docket No.: 18-009087
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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 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 October 23, 2018, from Lansing, Michigan. The Department was represented by ██████████ 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, 116 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-116.

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 ██████████, 2015, Respondent submitted an application for FAP benefits to the State of Michigan. On that application, Respondent indicated that she lived in

Michigan and that she is not receiving any food assistance in any other states. Respondent signed the application, thereby certifying that the information contained within the application was truthful and she understood that she was required to report and changes, including relocating out of state, to the Department within 10 days. Exhibit A, pp. 16-49.

2. On [REDACTED], 2015, Respondent filed with the State of Arizona an application for FAP benefits. Exhibit A, pp. 58-75.
3. On the Arizona FAP application, Respondent provided an Arizona address and indicated that she was not receiving FAP benefits from any other state, despite receiving FAP benefits from the State of Michigan for a continuous period that began before the Arizona application was filed and ended after the Arizona application was filed. Exhibit A, pp. 58, 60.
4. By signing the application, Respondent certified that the information provided in the application was truthful and acknowledged that failure to be truthful could result in disqualification from benefits and potential criminal and civil penalties. Exhibit A, p. 73.
5. On [REDACTED] 2016, Respondent submitted to the Department an application for FAP benefits from the State of Michigan. Exhibit A, pp. 76-89.
6. On the Michigan application, Respondent provided a Michigan address and indicated that she was not receiving FAP benefits from any other state. Exhibit A, pp. 78-79.
7. Respondent signed the Michigan FAP application, certifying that the information provided was truthful and acknowledging that she could be subject to penalties and disqualification from future benefits if she is found to have intentionally misrepresented material facts to get benefits to which she was not entitled. Exhibit A, pp. 88-89.
8. On [REDACTED], 2017, Respondent filed with the State of Arizona an application for FAP benefits. Exhibit A, pp. 90-96.
9. On the Arizona application, Respondent provided an Arizona address and indicated that she was not receiving FAP benefits from any other state, despite receiving FAP benefits from the State of Michigan for a continuous period that began before the Arizona application was filed and ended after the Arizona application was filed. Exhibit A, pp. 90-91.
10. Arizona approved Respondent's FAP applications and thereafter issued Respondent FAP benefits from at least June 30, 2015, through November 30, 2016, and again from at least February of 2017 through July 31, 2017. Exhibit A, pp. 13-15.

11. The Department approved Respondent's Michigan FAP applications and thereafter issued Respondent benefits from at least June 1, 2015, through September 30, 2015, and again from at least July 5, 2016, through June 30, 2017. Exhibit A, pp. 98-100.
12. Respondent concurrently received FAP benefits from both Michigan and Arizona during the following three periods of time: (1) June of 2015 through September of 2015; (2) July of 2016 through November of 2016; and (3) February of 2017 through June of 2017. Exhibit A, pp. 13-15, 98-100.
13. Respondent was also advised on the Michigan applications that if she was found to have lied about where she lives in order to receive benefits on two or more cases at the same time, she would be disqualified from receiving FAP benefits for 10 years. Exhibit A, p. 40.
14. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her responsibilities to the Department. Exhibit A, p. 101.
15. The Department's OIG filed a hearing request on August 28, 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.
16. This was Respondent's first alleged IPV.
17. The OIG requested that Respondent be disqualified from receiving FAP benefits for a period of 10 years.
18. The Department's OIG indicates that the time periods it is considering the fraud periods are: (1) June 1, 2015, through September 30, 2015; (2) July 5, 2016, through November 30, 2016; and (3) February 1, 2017, through June 30, 2017. During the alleged fraud periods, Respondent was issued \$457 in FAP benefits from the State of Michigan.
19. 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's repeated misrepresentations of her residency while concurrently collecting benefits in Michigan and Arizona constitute 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 (July 2014), p. 1. Furthermore, a person cannot receive FAP benefits in more than one state for any month. BEM 222 (July 2013), 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 overissuance. BAM 700 (May 2014), p. 1.

In this case, the Department showed by clear and convincing evidence that Respondent was receiving benefits in both Michigan and Arizona during the entirety of the three separate alleged fraud periods. Thus, for each month the Department issued Respondent Michigan FAP benefits during the alleged fraud periods, 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 monthly FAP benefits totaling \$457 during the alleged fraud periods. As Respondent was ineligible to receive those benefits, they are considered an overissuance.

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 (October 2014) 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 in a dishonest scheme to defraud the people of Michigan and Arizona. On each of the applications she filled out, whether in Michigan or Arizona, Respondent certified that her statements were true and acknowledged the penalties for making false statements. Yet on at least three of those applications, Respondent made clear misrepresentations regarding her residency and receipt of FAP benefits from other states. Clearly, Respondent was simply attempting in a fraudulent manner to get benefits from multiple states. Respondent did not appear at the hearing to provide any explanations for her dishonest and fraudulent statements. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her 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 standards 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 Arizona during each of the three fraud periods. Respondent made numerous fraudulent statements regarding her 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 \$457 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 her 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 \$457 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 ten years.

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

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

DHHS

Tara Roland 82-17
8655 Greenfield
Detroit, MI 48228

Wayne County (District 17), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Respondent

[REDACTED]
[REDACTED]
[REDACTED]