



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MD [REDACTED]

Date Mailed: December 5, 2018
MAHS Docket No.: 18-009352
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 Regulations, particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on December 4, 2018, from Lansing, Michigan.

The Department was represented by Kelvin Christian of the Office of Inspector General (OIG). Mr. Christian testified on behalf of the Department and submitted 53 exhibits which were admitted into evidence.

Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5). The record was closed at the conclusion of the hearing.

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 competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on [REDACTED] [REDACTED] 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. [Dept. Exh. 1].
2. The OIG has requested that Respondent be disqualified from receiving program benefits. [Dept. Exh. 1].
3. Respondent was a recipient of FAP benefits issued by the Department. [Dept. Exh. 52-53].
4. On the Assistance Application signed by Respondent on [REDACTED] [REDACTED] 2017, Respondent listed a Michigan address. [Dept. Exh. 37-48].
5. Respondent was aware of the responsibility to report changes in his residence to the Department. [Dept. Exh 48].
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. [Dept. Exh 40-41].
7. Respondent began using FAP benefits outside of the State of Michigan beginning in [REDACTED] [REDACTED] 2016. [Dept. Exh 12].
8. On [REDACTED] [REDACTED] 2018, the Department received a [REDACTED] Match indicating that Respondent was receiving Public Assistance benefits from another state. The Match showed Respondent was receiving FAP and Medical Assistance from the State of [REDACTED] [Dept. Exh 11].
9. On [REDACTED] [REDACTED] 2018, the Department received information from the State of [REDACTED] which indicated that Respondent's SNAP/FAP benefits cased closed on [REDACTED] [REDACTED] 2018. The SNAP/FAP application was submitted to the State of [REDACTED] on [REDACTED], 2017. Respondent was named as a member of the household who was also applying for benefits. Respondent was the applicant's non-judicial boyfriend. [Dept. Exh. 18-36].
10. The OIG indicates that the time period they are considering the fraud period is [REDACTED] [REDACTED] 2017 through [REDACTED] [REDACTED] 2017.
11. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP benefits from the State of Michigan and the Department alleges that Respondent was not entitled to any benefits during this time period. [Dept. Exh 52-53].
12. This was Respondent's first alleged IPV.
13. 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), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services 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, 2017, the Department's Office of Inspector General requests Intentional Program Violation hearings for the following cases:

1. FAP trafficking overissuances that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or Food Assistance Program trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA) and Food Assistance Program (FAP) programs combined is \$500 or more, or
 - the total amount is less than \$500, and
 - the group has a previous Intentional Program Violation, or
 - the alleged Intentional Program Violation involves Food Assistance Program 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, pp 12-13 (10/1/2017).

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 720, p 1 (emphasis in original).

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 273.16(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, Respondent was a household member of his girlfriend who resided at [REDACTED], FL [REDACTED] as of the [REDACTED] benefits application benefit of [REDACTED] 2017.

Disqualification

A client who is found to have committed an Intentional Program Violation by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p 16. Clients are disqualified for ten years for a Food Assistance Program Intentional Program Violation involving concurrent receipt of benefits, and, for all other Intentional Program Violation cases involving Family Independence Program, Food Assistance Program or State Disability Assistance, for standard disqualification periods of one year for the first Intentional Program Violation, two years for the second Intentional Program Violation, and lifetime for the third Intentional Program Violation or conviction of two felonies for the use, possession, or distribution of controlled substances in separate periods if both offenses occurred after August 22, 1996. BEM 203, p 2; BAM 720, p 16. A disqualified member may continue as the grantee only if there is no other eligible adult in the group. BAM 720, p 17 (emphasis in original).

In this case, Respondent was residing in Florida and receiving FAP benefits as a household member in Florida from September 2017 through January 2018. Respondent was also receiving FAP benefits from the State of Michigan during the months of September and October 2017.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2018).

In this case, Respondent was receiving duplicate FAP benefits from the State of Florida and the State of Michigan from [REDACTED] 2017 through [REDACTED] 2017. As a result, Respondent was not eligible for Michigan FAP benefits due to his concurrent receipt of FAP benefits from both [REDACTED] and Michigan.

DECISION AND ORDER

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

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of FAP benefits in the amount of \$1,640.00.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$1,640.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from receiving FAP for a period of 12 months.

VLA/nr



Vicki L. Armstrong
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

Demitra Owens
12140 Joseph Campau
Hamtramck, MI
48212

Wayne 55 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], MD
[REDACTED]