



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 13, 2019
MAHS Docket No.: 18-013241
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 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 March 4, 2019, from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent appeared at the hearing and represented herself. Also appearing on behalf of Respondent was Respondent's sister, [REDACTED]. During the hearing, a 33-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-33.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup and/or collect?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) with respect to FAP?
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. While in Ohio on [REDACTED], 2017, Respondent filed with the Department an application for FAP benefits. On the application, Respondent indicated that she

lived at an address on [REDACTED] Michigan. Respondent further indicated that she was not disabled. Exhibit A, pp. 9-22.

2. Respondent signed the application and thereby certified that she understood the questions in the application and that she provided true and complete information. Respondent further certified that she understood the consequences of providing false information on the application. Respondent's signature also certified that Respondent had received, read, and understood the information contained within the DHHS publication titled "Things You Must Do." Exhibit A, p. 19.
3. "Things You Must Do" advised Respondent that she was required to report to the Department any changes to residency within ten days of the change and that an intentional failure to do so violated the law and if proven, would result in criminal and/or civil penalties, including potential disqualification from the program and a requirement to pay back any benefits wrongfully received. Exhibit A, p. 20.
4. On [REDACTED], 2018, Respondent filed with the Department an application for FAP benefits. On the application, Respondent indicated that she lived at an address on [REDACTED] in [REDACTED] Michigan. Exhibit A, pp. 27-33.
5. Respondent's FAP applications were approved, and the Department thereafter began issuing Respondent monthly FAP benefits through October 31, 2018. Exhibit A, p. 23.
6. Starting January 20, 2018, Respondent's FAP benefits were exclusively redeemed at stores located in the State of Ohio, mostly in Toledo. Exhibit A, pp. 24-25.
7. Respondent never reported to the Department that she had moved out of state.
8. The Department's OIG filed a hearing request December 18, 2018, to establish an overissuance of FAP benefits received by Respondent as a result of Respondent having allegedly committed an IPV by intentionally failing to report a move out of state while continuing to receive benefits, which constitutes an IPV with respect to that program. Exhibit A, pp. 1-7.
9. The OIG requested that Respondent be disqualified from receiving FAP benefits for a period of one year for a first IPV. Exhibit A, pp. 1-7.
10. The Department's OIG indicates that the time period it is considering the fraud period is December 14, 2017, through October 31, 2018 (fraud period), during which the Department issued Respondent \$1,746 in FAP benefits. Exhibit A, pp. 1-7; 23.
11. 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 committed an IPV with respect to FAP and MA and should be accordingly required to pay back the alleged ill-gotten gains and be disqualified from receipt of FAP benefits for a period of one year.

Overissuance

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; 7 CFR 273.18. Only Michigan residents are eligible to receive FAP benefits from the Department. BEM 220 (January 2016), p. 1.

In this case, the Department failed to show by clear and convincing evidence that Respondent became an Ohio resident at any point in time during the alleged fraud period. The Department contends that the exclusive use of Respondent's FAP benefits in Ohio and the fact that she applied for benefits from an IP address in Ohio show that Respondent is no longer a Michigan resident.

Respondent appeared at the hearing and rebutted the Department's contention that Respondent was living in Ohio at any point while receiving benefits from the Department. Respondent and her sister both credibly testified that Respondent maintained continuous residency in Michigan throughout the entire relevant time period and that Respondent's trips to Ohio were only temporary visits to see her boyfriend. Respondent eventually did move to Ohio, but it was after the alleged fraud period. After moving to Ohio, Respondent did not receive any benefits from the Department. As the Department failed to demonstrate that Respondent was ineligible to receive the FAP benefits during the alleged fraud period, no overissuance can be established.

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; 7 CFR 273.16(c).

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 not met its burden of proof. The Department's allegation was that Respondent committed an IPV by failing to timely report her change of residency to Ohio and then subsequently lying on a form by saying that she was still a Michigan resident. Thus, in order to show that Respondent committed an IPV, the Department must have proven that Respondent was, in fact, no longer a resident of Michigan at any time during the alleged fraud period. As discussed above, the Department failed to make that showing. Thus, the Department's IPV claim must fail.

Disqualification

A client who is found to have committed an IPV with respect to FAP by a court or hearing decision is disqualified from receiving FAP benefits. BAM 720, pp. 15-16; 7 CFR 273.16. 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 ten-year disqualification is imposed if a client makes a fraudulent statement or representation regarding residence in order to receive concurrent benefits from more than one state. BAM 720, p. 16; BEM 203 (October 2015), p. 1; 7 CFR 273.16(b)(5).

There is no IPV in this case. Thus, Respondent is not subject to a 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:

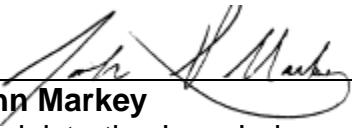
1. The Department has not established by clear and convincing evidence that Respondent received an overissuance of FAP benefits.
2. The Department has not established by clear and convincing evidence that Respondent committed an IPV with respect to her FAP benefits.

3. Respondent is not subject to a disqualification from receiving FAP benefits.

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

IT IS FURTHER ORDERED that the Department shall delete the alleged FAP overissuance.

JM/cg



John Markey
Administrative Law Judge
for Robert Gordon, 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

Via Email:

MDHHS-Genesee-Union St.-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

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