



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] AZ [REDACTED]

Date Mailed: February 6, 2019

MAHS Docket No.: 18-009738

Agency No.: [REDACTED]

Petitioner: OIG

Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, telephone hearing was held on January 9, 2019, from Lansing, Michigan. The Department was represented by Patrick Cousineau, Regulation Agent of the Office of Inspector General (OIG). 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).

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and Medical Assistance (MA) 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 the Food Assistance Program (FAP)?

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 an application for assistance dated [REDACTED] [REDACTED] 2017, Respondent acknowledged his duties and responsibilities, including the duty to report any change of residency to the Department in a timely manner. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 10-39.

2. Respondent starting using Food Assistance Program (FAP) benefits in Arizona on June 13, 2017, and used them exclusively in Arizona through September 17, 2017. Exhibit A, pp 43-46.
3. Respondent failed to report receiving earned income from employment from June 6, 2017, through September 8, 2017, reporting an Arizona address to his employer. Exhibit A, pp 40-41.
4. Respondent had received earned income from that same employer from August 21, 2015, through November 11, 2016. Exhibit A, pp 40-41.
5. Respondent received Food Assistance Program (FAP) benefits totaling \$194 from August 1, 2017, through September 16, 2017. Exhibit A, pp 47.
6. Respondent received Medical Assistance (MA) benefits with a value of \$621.26 from August 1, 2017, through September 16, 2017. Exhibit A, p 48.
7. On September 25, 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$815.26 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-8.
8. The Department's OIG filed a hearing request on September 25, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
9. This was Respondent's first established IPV.
10. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Service 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), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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-.3011.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - the total OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, or
 - the total OI amount is less than \$500, and
 - the group has a previous IPV, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee.

Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (October 1, 2017), pp 12-13.

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 the reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits the understanding or ability to fulfill reporting responsibilities.

BAM 700, p 7, BAM 720, 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 (emphasis in original); see also 7 CFR 273.16(e)(6).

To be eligible for FAP benefits, a person must be a Michigan resident. A person is considered a resident under the FAP while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (April 1, 2018), pp 1-2. The Department is prohibited from imposing any durational residency requirements on the eligibility for FAP benefits. 7 CFR 273.3(a).

For MA benefits, a Michigan resident is an individual who is living in Michigan except for a temporary absence. Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished. For example, individuals who spend the winter months in a warmer climate and return to their home in the spring. They remain MI residents during the winter months. BEM 220, p 2.

On an application for assistance dated [REDACTED] [REDACTED] 2017, Respondent acknowledged his duties and responsibilities including the duty to report any change of circumstances affecting his eligibility for benefits to the Department. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent received FAP totaling \$194 from August 1, 2017, through August 31, 2017. Respondent received MA benefits with a value of \$621.26 from August 1, 2017, through September 16, 2017.

Respondent began using FAP benefits in Arizona on June 13, 2017, and used them exclusively in Arizona through September 17, 2017.

Although Petitioner apparently failed to report earned income to the Department, the overissuance of FAP and MA benefits was not determined based on this unreported income.

The evidence presented on the record is consistent with a person who has temporarily relocated to Arizona. Respondent had no duty to report a temporary stay in Arizona and federal regulations prohibit a durational residency requirement for FAP eligibility. 7 CRR 273.3(a). The unreported earned income is consistent with a person that travels to Arizona for some purpose other than establishing permanent residency as shown by the two short-term periods of employment in Arizona. No evidence was presented to establish that Respondent did not intend to remain a Michigan resident after the purpose of his temporary stay in Arizona was complete.

An FAP recipient is permitted to use FAP benefits in another state. 7 CFR 274.8(b)(10). An MA recipient is permitted to maintain MA eligibility while temporarily absent from Michigan and remains a Michigan resident during the temporary absence. BEM 220, p 2.

The Department presented evidence that Respondent acknowledged the duties and responsibilities of receiving FAP and MA benefits. The Department presented evidence that Respondent left Michigan from June 13, 2017, through September 17, 2017, and that he had been in Arizona temporarily in the past. The evidence does not support a

finding that Respondent no longer intended to remain a Michigan resident. The evidence does not support a finding that Respondent received FAP and/or MA benefits that he was not eligible for based on residency.

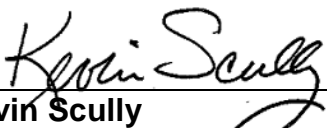
The Department has not established an Intentional Program Violation (IPV).

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 committed an IPV.
2. The Department is ORDERED to delete the OI and cease any recoupment action.

KS/dh



Kevin Scully
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

DHHS

Linda Gooden
25620 W. 8 Mile Rd
Southfield, MI 48033

Oakland County (District 3), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED] AZ [REDACTED]