



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: January 18, 2019
MAHS Docket No.: 18-010024
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 1/17/19, from Lansing, Michigan.

The Department was represented by Shannon Davis, 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).

Department Exhibit A.1-45 was admitted.

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 benefits for 12 months?

FINDINGS OF FACT

The Administrative Law Judge, based on the clear and convincing evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request with the Michigan Administrative Hearing System (MAHS) to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV on September 28, 2018.
2. The OIG has requested that Respondent be disqualified from receiving program benefits for one year.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report any changes in income and/or employment affecting FAP eligibility pursuant to his acknowledgment on the assistance application dated [REDACTED] 2017. Exhibit A.11-19.
5. Respondent failed to advise the Department that he was employed at [REDACTED] from [REDACTED] 2017, through [REDACTED] 2017. Exhibit A.31-33.
6. Respondent was a recipient of Michigan issued FAP benefits from [REDACTED] 2017, through [REDACTED] 2017.
7. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill his reporting responsibilities.
8. The OIG considered the alleged fraud benefit period to be [REDACTED] 2017, through [REDACTED] 2017, totaling \$1,743.00 for the benefit period in FAP benefits.
9. Petitioner filed a client error claim against Respondent and began recoupment for FAP benefits related to this case when Respondent had an open FAP case. Respondent's case closed [REDACTED] 2018. As of the date of the administrative hearing, [REDACTED] 2019, Respondent's balance is \$1,707.00 for which Respondent ineligibly received and for which the Department is entitled to collect.
10. This was Respondent's first alleged IPV.
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), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking over issuances 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500.00 or more, or
 - the total amount is less than \$500.00, 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.

BAM 720, pp 12-13 (1/1/2016).

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; BAM 700, p 6.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. 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(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.

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, p. 15; BEM 708. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, 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. 18. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p 1 (4/1/2016). A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p 17.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p 1.

A recipient is informed and agrees pursuant to their signatures on the Acknowledgment Form at application and redetermination that they understand and acknowledge that they are prohibited from receiving benefits in contradiction to the agreements acknowledged on the application regarding residency, misuse, failure to report income and changes to the Department. This includes acknowledgement that a recipient may not sell, trade, or give away FAP benefits, PIN or Michigan Bridge card. A recipient may not allow a retailer to buy FAP benefits in exchange for cash. No one is allowed to use someone else's FAP benefits or Bridge card for their household. DHS-Pub-322 (11-10).

In this case, Respondent was aware of the responsibility to report any changes in income, including any employment pursuant to his acknowledgment on the Redetermination (DHHS 1010) dated [REDACTED] 2017. Moreover, the Department submitted evidence that it had sent a letter to Petitioner on September 17, 2017, which explicitly states that Petitioner is responsible to report any changes in his income. As such, evidence supports finding that Respondent failed to advise the Department that he had earned income that should have been budgeted against the welfare Food Assistance Program administered by the State of Michigan.

Respondent failed to show for the administrative hearing. As such, the Department's facts are unrefuted.

The Department has established that Respondent was aware that misuse of his food benefits is a violation of state and federal laws for which he may be disqualified from the program, fined, put in prison, or all three and repayment of the food benefits.

Based on the evidence presented and the credible testimony of the Resident Agent, the Administrative Law Judge found the OIG established, under the clear and convincing standard, that Respondent committed an IPV.

DECISION AND ORDER

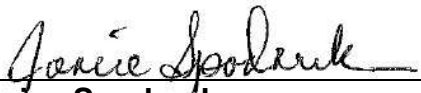
The Administrative Law Judge, based upon clear and convincing evidence of record and the above Findings of Fact and Conclusions of Law, and, for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of FAP program benefits in the amount of \$1,743.00 for the period from [REDACTED] 2017, through [REDACTED] 2017, with a **remaining balance \$1,707.00** as of [REDACTED] 2019.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$1,707.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program for a period of 12 months.

JS/dh



Janice Spodarek
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

