



STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

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██████████ TX ██████████

Date Mailed:
MAHS Docket No.: 18-010138
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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 February 26, 2019, from Lansing, Michigan. The Department was represented by Brian Siegfried, 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) 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 ██████████ ██████████ 2012, Respondent acknowledged her duties and responsibilities 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 17-48.

2. On a Redetermination (DHS-1010) form received by the Department on [REDACTED] [REDACTED] 2015, Respondent reported to the Department that she lived in Michigan. Exhibit A, pp 57-62.
3. Respondent's son entered into a lease for an apartment in Texas on [REDACTED] [REDACTED] 2015, and listed Respondent as an occupant. Exhibit A, pp 107-121.
4. Respondent's son signed a supplemental application for affordable housing and listed Respondent as his emergency contact using a [REDACTED] [REDACTED] Michigan, address as her home address. Exhibit A, p 120.
5. On a Redetermination (DHS-1010) form received by the Department on [REDACTED] [REDACTED] 2016, Respondent reported to the Department that she lived in Michigan. Exhibit A, pp 69-74.
6. Respondent acknowledged under penalties of perjury that her [REDACTED] [REDACTED] 2016, Redetermination form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, pp 74.
7. On October 19, 2016, the Department notified Respondent that she was eligible for Food Assistance Program (FAP) benefits with a benefit period of [REDACTED] [REDACTED] 2016, through [REDACTED] [REDACTED] 2017. Exhibit A, pp 75-80.
8. Respondent's son entered into a lease for an apartment in Texas on [REDACTED] [REDACTED] 2016, and listed Respondent as an occupant. Exhibit A, pp 99-106.
9. On a Redetermination (DHS-1010) form received by the Department on [REDACTED] [REDACTED] 2017, Respondent reported to the Department that she lived in Michigan. Exhibit A, pp 81-88.
10. Respondent acknowledged under penalties of perjury that her [REDACTED] [REDACTED] 2017, Redetermination (DHS-1010) was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, pp 87.
11. Respondent's son entered into a lease for an apartment in Texas on [REDACTED] [REDACTED] 2017, and listed Respondent as an occupant. Exhibit A, pp 122-129.
12. Respondent starting using Food Assistance Program (FAP) benefits in Texas on [REDACTED] [REDACTED] 2015, and except for on Purchase in Michigan on [REDACTED], 2016, she used them exclusively in Texas through [REDACTED] [REDACTED] 2016. Exhibit A, p 133.

13. Respondent used her Food Assistance Program (FAP) benefits in Michigan from [REDACTED] [REDACTED] 2016, through [REDACTED] [REDACTED] 2017. She made one purchase in Texas on [REDACTED] [REDACTED] 2017, and then used her benefits in Michigan on September 22, 2017. Exhibit A, p 134.
14. Respondent received Food Assistance Program (FAP) benefits totaling \$4,072 from [REDACTED] [REDACTED] 2016, through [REDACTED] [REDACTED] 2017. Exhibit A, pp 135-139.
15. On [REDACTED] [REDACTED] 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$4,072 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 9-13.
16. The Department's OIG filed a hearing request on September 28, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
17. This was Respondent's first established IPV.
18. 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.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2018), p 1.

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).

State agencies must adopt uniform standards to facilitate interoperability and portability nationwide. The term “interoperability” means the EBT system must enable benefits issued in the form of an EBT card to be redeemed in any state. 7 CFR 274.8(b)(10).

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (January 1, 2018), p 12. The Department will act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change, except that the Department will act on a change other than a tape match within 10 days of becoming aware of the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (January 1, 2018), p 7. A pending negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p 12.

On an application for assistance dated [REDACTED] [REDACTED] 2012, Respondent acknowledged her duties and responsibilities 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.

On a Redetermination (DHS-1010) form received by the Department on [REDACTED] [REDACTED] 2015, Respondent reported to the Department that she was living in Michigan. The evidence supports a finding that this information was truthful since she used her FAP benefits exclusively in Michigan from [REDACTED] [REDACTED] 2015, through [REDACTED] [REDACTED] 2015.

Respondent began using her FAP benefits in Texas on [REDACTED] [REDACTED] 2015, and except for one purchase in Michigan on [REDACTED] [REDACTED] 2016, she used them exclusively in Texas through [REDACTED] [REDACTED] 2016.

Respondent's son entered into a lease for an apartment in Texas on [REDACTED] [REDACTED] 2015, and listed Respondent as an occupant. Respondent's son signed a supplemental application for affordable housing and listed Respondent as his emergency contact using a Houghton Lake, Michigan, address as her home address. This address is the same address that her Redetermination forms were mailed to.

No evidence was presented on the record to establish the purpose of Respondent going to Texas.

On a Redetermination (DHS-1010) form received by the Department on [REDACTED] [REDACTED] 2016, Respondent reported to the Department that she was living in Michigan.

Respondent's son entered into a lease for an apartment in Texas on [REDACTED] [REDACTED] 2016, and listed Respondent as an occupant. Respondent used her FAP benefits exclusively in Michigan from [REDACTED] [REDACTED] 2016, through [REDACTED] [REDACTED] 2017. Respondent's last use of FAP benefits in Texas was on [REDACTED] [REDACTED] 2017, when she made one purchase in Texas. Respondent used FAP benefits in Michigan on [REDACTED] [REDACTED] 2017.

The Department alleges that Respondent was no longer living in Michigan as of [REDACTED] [REDACTED] 2015, and that if she had reported moving to Texas in a timely manner, then the Department would have closed her FAP benefits by the first benefits period after [REDACTED] 14, 2016. Respondent received FAP totaling \$4,072 from [REDACTED] [REDACTED] 2016, through [REDACTED] [REDACTED] 2017.

The record evidence supports a finding that the information reported to the Department on her [REDACTED] [REDACTED] 2012, application form, and the Redetermination forms received by the Department on [REDACTED] [REDACTED] 2015, [REDACTED] [REDACTED] 2016, and [REDACTED] [REDACTED] 2017, contained truthful information when she reported that she was living in Michigan on those dates. Respondent's presence in Michigan on the dates she reported to be living in Michigan is established by her use of FAP benefits in Michigan during that time frame. Further, Respondent was listed as the emergency contact on her son's application for housing assistance in Texas using her Michigan address as her home address.

The Department failed to establish that Respondent did not travel to Texas for a temporary visit while intending to live in Michigan. The Department failed to establish that Respondent had a duty to report a temporary visit to Texas during her FAP benefit period. The evidence does establish Respondent's presence in Texas and that she was listed as an occupant of a Texas apartment, but also supports a finding that she travelled back and forth between Michigan and Texas during the period of September 28, 2015, through January 19, 2017. The evidence also supports a finding that Respondent considered herself to be living in [REDACTED] [REDACTED] because that address was used for the emergency contact information on her son's application for housing assistance in Texas.

The Department is prohibited from establishing any durational requirement to establish residency for the purposes of becoming eligible for or maintaining eligibility for FAP benefits. The evidence supports a finding that Respondent was in Texas for an extended period of time, but also supports a finding that she was in Michigan when she signed her Redetermination forms certifying that she lived in Michigan. The apartment leases support a finding that Respondent was in Texas and the occupant of a Texas apartment, but do not establish that she did not intend to live in Michigan during the period she received FAP benefits.

Therefore, the hearing record does not establish that Respondent was not eligible for FAP benefits based on residency from [REDACTED] [REDACTED] 2016, through [REDACTED] [REDACTED] 2017, or that she intentionally failed to report information for which there was a duty to report, or that she intentionally gave incomplete or inaccurate information needed to make a correct benefit determination.

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. Respondent **DID NOT** receive an OI of Food Assistance Program (FAP) benefits.
3. 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

