



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: February 25, 2019
MAHS Docket No.: 18-010857
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 February 12, 2019, from Lansing, Michigan. The Department was represented by Thomas Malik, 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 pages 1-69 were admitted as evidence.

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 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. The Department's OIG filed a hearing request on October 12, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG **has** requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of Food Assistance Program benefits issued by the Department.
4. Respondent signed a DHS-1171 Application for Assistance, acknowledging her rights and responsibilities of being on public assistance, on February 9, 2015. Respondent reported her mailing address as [REDACTED], MI [REDACTED].
5. Respondent indicated she resided in a house/apartment/mobile home however provided no home address.
6. Respondent **was** aware of the responsibility to report that she moved out of state and continued to receive Michigan FAP benefits.
7. Respondent spent her EBT card exclusively in Texas during the period of April 6, 2016 through May 8, 2016. The total number of purchases was 14. Respondent then had spending exclusively in Arizona during the period of May 14, 2016, through June 10, 2016. The total number of purchases was 14. Respondent began using her EBT card again in Michigan on July 7, 2016.
8. Respondent registered a motor vehicle in Arizona using the address [REDACTED], AZ [REDACTED] on June 29, 2016.
9. Concurrent Benefits Inquiry: On August 4, 2017, Monica Moreno with Arizona Department of Economic Security (DES) emailed Respondent's history of receiving Arizona SNAP (MRMoreno@azdes.gov).
10. Respondent applied for Arizona SNAP benefits on [REDACTED] [REDACTED] 2016 using the address [REDACTED], AZ [REDACTED]. Respondent received Arizona SNAP benefits during the period of [REDACTED] [REDACTED] 2016, through December 31, 2016.
11. On August 24, 2017, Texas HHSC faxed Respondent's Texas history to this agent (512-973-3185). Respondent received Texas SNAP during the period February of 2016 through April of 2016. Respondent was first able to access her Texas benefits on March 8, 2016. The address on file for Respondent with Texas HHSC

was [REDACTED], TX [REDACTED]. Also provided was Respondent's history of purchases with her Texas benefits. Respondent made purchases in Texas during the period of March 19, 2016, through May 5, 2016. The total number of purchases was 14.

12. Respondent was issued a total of \$489 in Michigan FAP benefits during the period of April 1, 2016 through June 30, 2016. The household size was two people.
13. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
14. Respondent was in the eligible group along with her adult child, [REDACTED]. Respondent received Food Assistance Program benefits during the period of April 1, 2016, to August 31, 2016. There was no indication Respondent reported moving outside of Michigan prior to June 30, 2016, in the case comments or ECF. There were no results for current child support in Consolidated Inquiry.
15. The Department's OIG indicates that the time period it is considering the fraud period is April 1, 2016 - June 30, 2016 (fraud period).
16. During the fraud period, Respondent was issued \$489 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
17. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$489.
18. The Department is seeking a ten-year disqualification from the Food Assistance Program due to Respondent receiving concurrent FAP benefits.
19. 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, 2014, 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 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.

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 700. 6; BAM 720

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, (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 court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720. 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.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA or FAP. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720.

Overissuance

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

Respondent was in the eligible group along with her adult child, [REDACTED] [REDACTED]. Respondent received FAP benefits during the period April 1, 2016, to August 31, 2016. There was no indication the Respondent reported moving outside of Michigan prior to June 30, 2016, in the case comments or ECF.

Respondent was issued a total of \$489 in Michigan FAP benefits during the period of April 1, 2016, through June 30, 2016. The household size was two people.

Respondent applied for Arizona SNAP benefits on [REDACTED] [REDACTED] 2016, using the address [REDACTED] AZ [REDACTED]. Respondent received Arizona SNAP benefits during the period of May 31, 2016, through December 31, 2016.

On August 24, 2017, Texas HHSC faxed Respondent's Texas history to this agent (512-973-3185). Respondent received Texas SNAP benefits during the period February of 2016 through April of 2016. Respondent was first able to access her Texas SNAP benefits on March 8, 2016. The address on file for Respondent with Texas HHSC was [REDACTED] TX [REDACTED]. Also provided was Respondent's history of purchases with her Texas benefits. Respondent made purchases in Texas SNAP benefits during the period of March 19, 2016, through May 5, 2016. The total number of purchases was 14.

Petitioner has established by the necessary competent, substantial and material evidence on the record that she received an overissuance of FAP benefits as a result of receiving (SNAP) FAP benefits concurrently in more than one state which the Department must recoup. The evidence on the record establishes that Petitioner committed an Intentional Program Violation.

DECISION AND ORDER

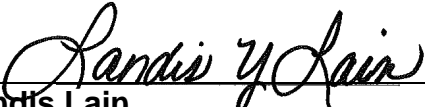
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

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 \$489.00.

The Department is ORDERED to initiate recoupment/**collection** procedures for the amount of \$489.00 in accordance with Department policy.

It is **FURTHER ORDERED** that Respondent be personally disqualified from participation in the Food Assistance Program (FAP) for 10 years.

LL/hb



Landis Lain
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

L. Bengel via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED]
[REDACTED], MI [REDACTED]