



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 8, 2019
MAHS Docket No.: 18-011891
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 January 8, 2019, from Lansing, Michigan. The Department was represented by Amanda Zimmerman, #159, Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by herself.

ISSUES

1. Did Respondent receive an over issuance (OI) of Food Assistance Program (FAP) and Medicaid (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 receiving benefits for 1 year?

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 November 27, 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 FAP benefits.
3. Respondent's daughter was a recipient of FAP, and MA benefits issued by the Department. Department Exhibit 1, pgs. 73-75.
4. On the Redetermination Application, DHS-1010, signed by Respondent on [REDACTED] 2017, and the Assistance Application, DHS-1171, submitted on [REDACTED] 2017, Respondent reported that she understood the responsibility to report changes in household composition to the Department within 10 days. Department Exhibit 1, pgs. 11-38.
5. Respondent failed to report that her daughter had moved out of her home and was receiving concurrent FAP benefits in Wisconsin on May 1, 2017. Department Exhibit 1, pgs. 59-70.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. The Department's OIG indicates that the time period it is considering the fraud period for FAP is from July 14, 2017, through December 31, 2017, and MA is from July 1, 2017, through December 31, 2017 (fraud period).
8. During the fraud period, Respondent was issued \$3,939 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$3,133 in such benefits during this time period and Respondent was issued \$1,167.24 in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period. Department Exhibit 1, pgs. 76-88.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$806 and MA benefits in the amount of \$1,167.24.
10. This was Respondent's first alleged IPV, but since Respondent's daughter received concurrent benefits the FAP sanction is 10 years.
11. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable, but Respondent provided a more current address at the hearing.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human

Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

Effective January 1, 2016, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking overissuances 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 or more, or
 - the total 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.

BAM 720 (1/1/16), p. 12-13.

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; 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 client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720; 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. 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. 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.

Overissuance

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

In this case, Respondent failed to report that her daughter had moved out of her home and was receiving concurrent FAP benefits in Wisconsin on May 1, 2017. Department Exhibit 1, pgs. 59-70. As a result, Respondent received an over issuance in FAP benefits in the amount of \$806 and MA benefits in the amount of \$1,167.24 that the Department is required to recoup. During the hearing, the OIG Agency conceded that Respondent couldn't have known that her daughter was also receiving FAP benefits in Wisconsin. However, if she had reported that her daughter was no longer in the home as required by Department policy then the Respondent's daughter would have been removed from her case timely and this would not have been an issue. The OIG Agent removed the 10-year penalty sanction option for receiving concurrent FAP benefits down to one year. Therefore, Respondent is sanctioned from receiving FAP benefits for one year.

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 established by clear and convincing evidence that Respondent did commit an intentional program violation (IPV).
2. Respondent did receive an OI of program benefits in FAP benefits in the amount of \$806 and MA benefits in the amount of \$1,167.24

The Department is ORDERED to initiate recoupment procedures in FAP benefits in the amount of \$806 and MA benefits in the amount of \$1,167.24 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from the FAP program for a period of 12 months.

CF/hb



Carmen G. Fahie
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

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

DHHS

Susan Noel
26355 Michigan Ave.
Inkster, MI 48141

Wayne County (District 19), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Respondent

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