



STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

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Date Mailed: March 28, 2019
MAHS Docket No.: 18-012204
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 March 12, 2019, from Lansing, Michigan. The Department was represented by Kelvin Christian, 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 ██████████ ██████████ 2011, Respondent acknowledged the duties and responsibilities of receiving Food Assistance Program (FAP) benefits. Respondent did not have an apparent physical or

mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 9-22.

2. Respondent acknowledged under penalties of perjury that her [REDACTED] [REDACTED] 2011, application 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 9-22.
3. Respondent used her Food Assistance Program (FAP) benefits in Michigan from January 3, 2010, through January 15, 2010. Exhibit A, p 23.
4. Respondent began using her Food Assistance Program (FAP) benefits outside Michigan on February 8, 2010, and used them exclusively outside Michigan through July 26, 2010. Exhibit A, pp 23-24.
5. Respondent used her Food Assistance Program (FAP) benefits exclusively in Michigan from May 3, 2011, through June 15, 2011. Exhibit A, p 24.
6. Respondent used her Food Assistance Program (FAP) benefits exclusively outside Michigan from July 15, 2011, through March 20, 2012. Exhibit A, pp 24-25.
7. Respondent received Food Assistance Program (FAP) benefits totaling \$1,400 from September 1, 2011, through March 31, 2012. Exhibit A, pp 34-35.
8. Respondent received Food Assistance Program (FAP) benefits totaling \$1,000 from March 1, 2010, through July 31, 2010. Exhibit A, pp 34-35.
9. On November 19, 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$2,400 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-8.
10. The Department's OIG filed a hearing request on November 19, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
11. This was Respondent's first established IPV.
12. A Notice of Hearing was mailed to Respondent at the last known address and was 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.

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).

On an application for assistance dated [REDACTED] [REDACTED] 2011, Respondent acknowledged the duties and responsibilities of receiving FAP benefits. 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 \$1,400 from September 1, 2011, through March 31, 2012. Respondent received FAP benefits totaling \$1,000 from March 1, 2010, through July 31, 2010.

Respondent was an ongoing FAP recipient on February 8, 2010, when she left Michigan for approximately 6 months and used her FAP benefits exclusively outside Michigan making purchases in Alabama and Florida. Respondent then returned to Michigan from May 3, 2011, through June 15, 2011, and used her FAP benefits exclusively inside Michigan. Respondent then left Michigan on or around July 15, 2011, and used her FAP benefits exclusively in Alabama and Florida through March 20, 2012.

The evidence supports a finding that Respondent left Michigan while receiving Michigan FAP benefits, and used those benefits outside Michigan without reporting her absence from Michigan to the Department. Respondent is entitled to use her Michigan FAP benefits in any state and Respondent was under no duty to report a temporary absence from Michigan. The Department is prohibited from establishing a durational requirement for establishing eligibility for FAP benefits upon entering Michigan, and therefore has no authority to set the length that an absence from Michigan establishes residency in another state. Therefore, the Department has failed to establish that Respondent was not eligible for FAP benefits or that she received an overissuance of FAP benefits.

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.

The hearing record does not establish that Respondent intentionally failed to report information for which she had a duty to report, or 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. 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

Dora Allen
14061 Lappin
Detroit, MI 48205

Wayne County (District 76), DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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