



STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

GRETCHEN WHITMER  
GOVERNOR

ORLENE HAWKS  
DIRECTOR

██████████  
██████████  
██████████ GA ██████████

Date Mailed: April 3, 2019  
MAHS Docket No.: 18-012316  
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 19, 2019, from Lansing, Michigan. The Department was represented by Dawn O'Dell, 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) and Medical Assistance (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 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 ██████████ 2017, 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 10-50.

2. Respondent acknowledged under penalties of perjury that her [REDACTED] [REDACTED] 2017, 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 31.
3. Respondent started using Food Assistance Program (FAP) benefits in Illinois on June 13, 2017, and used them predominately in Illinois through October 25, 2017, with one purchase made in Arizona, but no purchases in Michigan. Exhibit A, pp 55-57.
4. Respondent failed to report starting employment on July 7, 2017, and receiving earned income from July 14, 2017, through May 18, 2018. Respondent reported an Illinois address to her employer. Exhibit A, pp 51-54.
5. Respondent received Food Assistance Program (FAP) benefits totaling \$607 from September 1, 2017, through October 31, 2017. Exhibit A, p 58.
6. Respondent received Medical Assistance (MA) benefits with a value of \$636.43 from September 1, 2017, through October 31, 2017. Exhibit A, pp 59-60.
7. On November 26, 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$1,243.43 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-8.
8. The Department's OIG filed a hearing request on November 26, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
9. This was Respondent's first established IPV.
10. 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).

For MA benefits, A Michigan resident is an individual who is living in Michigan except for a temporary absence and residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished. BEM 220, p 2.

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 273.16(e)(6).

Respondent acknowledged the duties and responsibilities of receiving FAP and MA benefits on an application for assistance dated [REDACTED] [REDACTED] 2017. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. The evidence supports a finding that Respondent left the state on or around Jun 13, 2017, which was established by the fact that all purchases made with Respondent's FAP benefits were made outside Michigan.

During the period that Respondent was using her FAP benefits exclusively outside Michigan, Respondent failed to report that she had started employment on July 7, 2017, and received earned income from July 14, 2017, through May 18, 2018. During the period of alleged overissuance, Respondent was not receiving the maximum allotment of FAP benefits based on a household of two. While this unreported income would have affected Respondent's eligibility for FAP benefits, it cannot be determined from the record evidence how her eligibility for benefits would have changed if she had reported this income to the Department. Further, Respondent had reported being employed on her [REDACTED] [REDACTED] 2017, application for assistance, and no evidence was presented as to whether this income was reported as ending.

Instead of claiming that Respondent received more FAP benefits than she was eligible for, the Department argues that Respondent was totally ineligible for FAP benefits based on its assertion that she was no longer living in Michigan.

A person meets the residency requirements for receiving FAP benefits 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. A person meets the residency requirements for MA benefits while living in Michigan except for a temporary absence, or if the person intends to return.

The evidence supports a finding that Respondent was outside Michigan for at least five months. The Department failed to present clear and convincing evidence that Respondent had not left Michigan for a temporary purpose.

The Department is prohibited from establishing a durational requirement to establish Michigan residency and has no authority to establish a durational requirement to lose Michigan residency. Federal regulations authorize FAP recipients to use their FAP benefits to make purchases in other states and the Department has failed to establish that Respondent was ineligible for those FAP benefits. With respect to MA benefits, BEM 220 specifically acknowledges that a person may leave the state for months at a time while remaining eligible for MA in Michigan as long as there is an intent to return. The Department failed to present clear and convincing evidence that Respondent did not intend to return to Michigan.

The Department has failed to establish an overissuance of FAP or MA benefits. The Department has failed to establish that Respondent failed to report information for which she had a duty to report, or that she 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

**Petitioner**

OIG  
PO Box 30062  
Lansing, MI 48909-7562

**DHHS**

Renee Swiercz  
51111 Woodward Ave 5th Floor  
Pontiac, MI 48342

Oakland County (District 4), DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

**Respondent**

████████████████████  
████████████████████  
████████ GA ██████████