



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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Date Mailed: May 16, 2019
MOAHR Docket No.: 18-014011
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

HEARING DECISION FOR CONCURRENT BENEFITS
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 Regulations, particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on May 7, 2019, from Lansing, Michigan. The Department was represented by Sashanda Walker, 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.28 was admitted.

ISSUES

1. Did Respondent receive an overissuance (OI) of 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 FAP benefits due to the concurrent receipt of benefits for 10 years?

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 December 10, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, allegedly committed an IPV.
2. The OIG **has** requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. On the Assistance Application signed by Respondent on [REDACTED] [REDACTED] 2017, Respondent reported her residence in Michigan.
5. Respondent was aware of the responsibility to report changes in her residence to the Department.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. Respondent began using FAP benefits outside of the State of Michigan beginning on February 1, 2017.
8. The OIG indicates that the time period they are considering the fraud period is February 1, 2017, through August 31, 2017, and then on September 11, 2017, through September 30, 2017.
9. During the alleged fraud period, Respondent was issued \$403.00 in FAP benefits from the State of Michigan.
10. During the alleged fraud period, Respondent was issued FAP benefits from the State of Alabama from February of 2017 through January of 2018.
11. During the alleged fraud time period Respondent attempted to collect benefits in the states of Ohio and Arkansas.
12. This was Respondent's first alleged IPV for concurrent benefits.
13. 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; 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. Federal regulations are found at 7 CFR 273(e)(6); 273.16. 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.

In this case, clear and convincing evidence shows that while Respondent received FAP benefits in Michigan Exhibit A.26-27, Respondent also received FAP benefits in Alabama from February of 2017 through January of 2018. Exhibit A.25. Evidence further shows that the benefits in Michigan were all cashed, and, further, were all cashed out of state. Further, Respondent acknowledged that she understood that she could be prosecuted for fraud for fraud and acknowledged her responsibilities to report all changes pursuant to her personally signed application on a DHS 1171 on September 11, 2017. Under these facts, the Department has met its burden of proof with clear and convincing evidence.

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.

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.

In this case, clear and convincing evidence shows that Respondent fraudulently collected concurrent benefits and thus, is disqualified for 10 years.

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, evidence shows that Respondent received \$403.00 in benefits for which she was not entitled and for which the Department is entitled to collect.

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 due to the receipt of concurrent benefits.
2. Respondent received an OI of FAP benefits in the amount of \$403.00.

The Department is ORDERED to initiate recoupment/**collection** procedures for the amount of \$403.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for 10 years.

JS/dh



Janice Spodarek
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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

DHHS

Richard Latimore
4733 Conner
Detroit, MI 48215

Wayne County (District 57), DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Respondent

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