



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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

Date Mailed: May 16, 2019  
MOAHR Docket No.: 18-014070  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Janice Spodarek

### **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 May 7, 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).

Department Exhibit A.29 was admitted.

### **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 FAP 12 months?

## **FINDINGS OF FACT**

The Administrative Law Judge, based on the clear and convincing evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on December 7, 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 FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to answer all questions truthfully, and that failure to do so can result in an IPV for fraud pursuant to Respondent's acknowledgements on April 28, 2017. Exhibit A.14-25.
5. Respondent did not have an apparent physical or mental impairment that would limit his ability to understand his responsibility to fulfill his reporting requirements.
6. Respondent had more than one felony conviction after August 22, 1996: on April 5, 2012; and on April 13, 2004. Respondent only disclosed one conviction. Exhibit A.14-25.
7. The Department's OIG indicates that the time period it is considering the fraud period is April 28, 2017, to October 31, 2018.
8. During the fraud period, Respondent was issued \$3,440.00 in FAP benefits by the State of Michigan.
9. This is Respondent's first alleged IPV.
10. 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), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and 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:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking over issuances 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, pp 12-13 (January 1, 2016).

### **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 720 p 1; BAM 700, p 6.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p 1.

Under BEM 203, 21 USC 862a and 7 CFR 273.1, and 273.11 an individual can be denied FAP benefits where they failed to disclose 2 or more felony drug convictions since August 22, 1996. Where such is the case, an individual results in disqualification.

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; 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, p 15; 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, p 18. 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, p 1 (April 1, 2016). 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 17.

### **Overissuance**

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p 1.

A recipient is informed and agree pursuant to their signatures on the Acknowledgment Form at application and redetermination that they understand and acknowledge that they are prohibited from receiving benefits in contradiction to the agreements acknowledged on the application regarding residency, misuse, failure to report income and changes to the Department. This includes acknowledgement that a recipient may not sell, trade, or give away FAP benefits, PIN or Michigan Bridge card. A recipient may not allow a retailer to buy FAP benefits in exchange for cash. No one is allowed to use someone else's FAP benefits or Bridge card for their household. DHS-Pub-322 (11-10).

In this case, evidence shows that Respondent acknowledged that he was required to truthfully answer all questions to determine his eligibility, and that failure to do so could subject him to fraud under the intentional program violation FAP law and policy.

Evidence further shows that Respondent had two drug-related felony convictions. The record indicates that Respondent signed an [REDACTED] [REDACTED] 2017 application failing to disclose both felony convictions. Respondent is not eligible for FAP benefits where he has been prosecuted and found to have committed 2 or more felony drug convictions.

The Department testified that applying either the BEM 203 current language of convictions, or, the alternative language as to when the offences occurred, the evidence would direct the same outcome of a disqualifying IPV of the FAP program under the criminal justice policy found in federal and state law and policy.

Based on the evidence presented and the credible testimony of the Department, the undersigned Administrative Law Judge found the OIG established, under the clear and convincing standard, that Respondent committed an IPV in this matter.

### **DECISION AND ORDER**


The Administrative Law Judge, based upon clear and convincing evidence of record and 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 committed an IPV.
2. Respondent did receive an OI of FAP benefits in the amount of \$3,440.00.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$3,440.00 in accordance with Department policy.

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

JS/dh

  
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**Janice Spodarek**  
Administrative Law Judge  
for Robert Gordon, Director  
Department of Health and Human Services

