



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]

Date Mailed: July 26, 2019
MOAHR Docket No.: 19-001541
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 July 15, 2019, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear at the hearing. The hearing 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). During the hearing, a 65-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-65.

The Department was initially seeking to establish an Intentional Program Violation with respect to the Food Assistance Program (FAP) and Medicaid (MA). The Notice of Hearing was returned as undeliverable, despite being delivered to Respondent's most recent address of record. As a result, the MA-related portion, and only that portion, of the Department's hearing request is dismissed.

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) with respect to FAP?
3. Should Respondent be disqualified from receiving FAP benefits, and if so, for how long?

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 ██████ 2016, Respondent submitted to the Department an application for FAP benefits. On the application, Respondent indicated that she lived in ██████, Michigan. Exhibit A, pp. 12-38.
2. Respondent signed the application. By signing the application, Respondent certified that the information on the application was true and complete to the best of her knowledge. Furthermore, Respondent acknowledged that failing to be truthful could result in penalties, including disqualification from future benefits and a requirement to repay the benefits received. Respondent further acknowledged that she received, read, and understood the instructions provided in the Important Things to Know pamphlet. Included in that pamphlet is an instruction to report any changes to residency within ten days of the change and that failure to do so could result in fraud proceedings being initiated against her. Exhibit A, pp. 20-21.
3. Respondent's application was approved, and Respondent received monthly FAP benefits from the Department through September 30, 2017. Exhibit A, p. 60.
4. Respondent's Michigan-issued FAP benefits were redeemed exclusively in Arizona starting May 20, 2017.
5. On ██████ 2017, Respondent submitted to the State of Arizona (Arizona) an application for FAP benefits. On that application, Respondent certified that she lived in Arizona and was not receiving any FAP benefits from any other state at the time, despite her receiving monthly FAP benefits from the Department. Based on Respondent's untruthful application, Arizona approved her FAP benefits and issued FAP benefits to Respondent. Exhibit A, pp. 39-59.
6. Respondent received FAP benefits from both the Department and Arizona from June 1, 2017 through September 30, 2017. She also regularly used both benefits, occasionally using them both on the same day. Exhibit A, pp. 59; 61-63.
7. Based on Respondent's dual receipt of FAP benefits from the Department and Arizona, the Department investigated the matter to determine whether Respondent was eligible to receive the benefits.
8. The Department's OIG filed a hearing request on January 25, 2019 to establish an overissuance of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by collecting FAP benefits from Michigan and Arizona. Exhibit A, pp. 1-8.
9. This was Respondent's first alleged IPV.

10. The OIG requested that Respondent be disqualified from receiving FAP benefits for a period of ten years based on concurrent receipt of benefits. Exhibit A, pp. 1-8.
11. The Department's OIG indicates that the alleged fraud period with respect to FAP benefits is June 1, 2017 through September 30, 2017, (fraud period), during which the Department issued Respondent \$727 in FAP benefits. Exhibit A, pp. 1-8, 60.
12. A Notice of Hearing was mailed to Respondent at the last known address and was 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), 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.

The Department's position in this matter is that Respondent made false statements regarding her residency in order to concurrently obtain FAP benefits from more than one state.

Overissuance

Only residents of Michigan are eligible to receive benefits from the Department. BEM 220 (January 2016), p. 1; 7 CFR 273.18. Furthermore, an individual must live in the state in which he or she files the application for FAP benefits. 7 CFR 273.3. When an ineligible client is issued benefits or an eligible client is issued more benefits than the client is entitled, the Department must attempt to recoup the OI. BAM 700 (January 2016), p. 1; 7 CFR 273.18.

In this case, the Department showed by clear and convincing evidence that Respondent was an Arizona resident for the entire months of June, July, August, and September 2017, during which time Respondent was also receiving FAP benefits from the Department. This conclusion is based on the fact that Respondent's Michigan-issued FAP benefits were used exclusively in Arizona starting May 20, 2017. Further bolstering that conclusion is the fact that Petitioner submitted to Arizona an application for FAP benefits on [REDACTED], 2017 wherein she certified under penalty of perjury that she was an Arizona resident.

Thus, based on the information presented, Respondent was not a Michigan resident and was ineligible to receive benefits from the Department from at least June 1, 2017 through September 30, 2017. However, because of Respondent's failure to inform the Department of her move, the Department issued to Respondent FAP benefits of \$727 from June 1, 2017 through September 30, 2017. As Respondent was ineligible to receive those benefits, they are considered an overissuance. In total, the overissuance was \$727.

Intentional Program Violation

The Department's policy in effect at the time of Respondent's alleged IPV defined an IPV as an overissuance in which the following three conditions exist: (1) the client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination; (2) the client was clearly and correctly instructed regarding his or her reporting responsibilities; and (3) the client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill his or her reporting responsibilities. BAM 720 (January 2016), p. 1; 7 CFR 273.16(c).

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, page 1; see also 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence which is so clear, direct, weighty, and convincing that it enables a firm belief as to the truth of the allegations sought to be established. *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (citing *In re Jobes*, 108 NJ 394 (1987)).

Respondent was required to report changes in her group's circumstances, including residency changes, to the Department within 10 days of the date of the change. BAM 105 (April 2014), pp. 11-12; 7 CFR 273.12(a)(1)-(2). The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent failed to report that she moved to Arizona despite the fact that she had applied for FAP benefits from Arizona shortly thereafter. The Department clearly and correctly instructed Respondent be honest and the consequences for failing to do so.

Respondent's failure to report the change to the Department must be considered an intentional misrepresentation to receive benefits she was not entitled to from Michigan since Respondent knew or should have known that she could only receive FAP benefits from one state at any given time. It is clear that Respondent had an intent to deceive the Department and Arizona regarding her receipt of benefits from the other. Respondent sought to maximize her monthly FAP benefits by defrauding Michigan and Arizona into concurrently issuing FAP benefits. The Department has proven by clear and convincing evidence that Respondent committed an Intentional Program Violation.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving FAP benefits. BAM 720, pp. 15-16; 7 CFR 273.16(b). In general, clients are disqualified 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. 16. A ten-year disqualification is imposed if a client makes a fraudulent statement or representation regarding residence in order to receive concurrent benefits from more than one state. BAM 720, p. 16; BEM 203 (October 2015), p. 1; 7 CFR 273.16(b)(5).

The Department's position was that this case requires the imposition of a ten-year disqualification because Respondent received concurrent benefits from both Michigan and Arizona. Based on the evidence presented, Respondent made a fraudulent representation on her [REDACTED], 2017 FAP application regarding her receipt of benefits from another state. Therefore, Respondent is subject to a ten-year disqualification from receiving FAP benefits.

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:

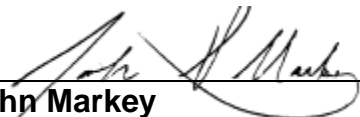
1. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to his FAP benefits.
2. Respondent is subject to a ten-year disqualification from receiving FAP benefits.
3. Respondent received an overissuance of FAP benefits in the amount of \$727 that the Department is entitled to recoup and/or collect.

IT IS ORDERED that Respondent shall be disqualified from receiving FAP benefits for a period of ten years.

IT IS FURTHER ORDERED that the Department may initiate recoupment and/or collection procedures for the FAP overissuance amount of \$727 established in this matter less any amounts already recouped or collected.

IT IS FURTHER ORDERED that the Department's hearing request with respect to Respondent's MA case is dismissed.

JM/cg



John Markey
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

Via Email:

MDHHS-Washtenaw-20-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]