



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.: 19-002413
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, an in-person hearing was held on July 18, 2019, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent appeared at the hearing and was represented by her attorney, Marie Defer. During the hearing, a 26-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-26, and a single page document was offered and admitted into evidence as Exhibit B, p. 1.

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?

FINDINGS OF FACT

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

1. Respondent was an ongoing recipient of FAP benefits from the Department.

2. On October 13, 2015, the Department issued to Respondent a Redetermination form to gather relevant information regarding Respondent's ongoing eligibility for FAP benefits. Respondent timely returned the completed Redetermination on [REDACTED] 2015. The returned Redetermination did not contain any untruthful statements. Notably, it also did not contain any directives to Respondent regarding reporting responsibilities. Exhibit A, pp. 11-16.
3. In November 2015, Respondent visited Tennessee. While in Tennessee, she continued to receive and use her Department-issued FAP benefits. Exhibit A, pp. 17-18; 26.
4. On [REDACTED], 2016, Respondent submitted to the State of Tennessee Department of Human Services (TDHS) an application for FAP benefits. Respondent honestly completed the application and was approved for FAP benefits from TDHS. Exhibit A, pp. 19-25.
5. When Respondent was completing the application process, Respondent informed TDHS that she was at the time receiving FAP benefits from the Department.
6. Respondent returned back to Michigan the following month. When she returned, she promptly contacted TDHS to report that she was back in Michigan.
7. Despite Respondent diligently reporting her situation to TDHS and being assured that she was doing everything correctly, Respondent was issued FAP benefits from both the Department and TDHS for a period from April 2016 through November 2016. Exhibit A, pp. 21-26.
8. The Department's OIG filed a hearing request on February 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 Tennessee concurrently from April 1, 2016 through November 30, 2016. Exhibit A, pp. 1-9.
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.
11. The Department's OIG indicates that the time period it is considering the fraud period is April 1, 2016 through November 30, 2017, (fraud period), during which the Department issued Respondent \$861 in FAP benefits. Exhibit A, pp. 1-9, 26.
12. 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), 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 committed an Intentional Program Violation (IPV) with respect to FAP by collecting FAP benefits from both the Department and TDHS concurrently. The Department is requesting an order disqualifying Respondent from receiving FAP benefits for ten years and requiring Respondent to pay back the FAP benefits Respondent received from the Department from April 1, 2016 through November 30, 2016.

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)).

In this case, the Department has not met its burden as it failed to establish any of the three elements by clear and convincing evidence. First, there is no evidence that Respondent ever intentionally gave inaccurate or incomplete information to the Department. Likewise, it is not clear that she intentionally failed to report anything to the Department either. Respondent credibly testified that she tried her hardest to ensure that she was doing everything correctly. Second, there is no evidence in the record that Respondent was clearly and correctly instructed regarding her reporting requirements.

The record is entirely devoid of anything of the kind. Third, Respondent suffers from disabilities that limit her understanding or ability to fulfill her reporting responsibilities, if she had ever been informed of them in the first place. As the Department failed to establish any of the elements necessary to establish an IPV, it is found that the Department did not meet its burden of proof.

Overissuance

Only residents of Michigan are eligible to receive benefits from the Department. BEM 220 (January 2016), p. 1; 7 CFR 273.18. 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 did not show that Respondent was, at any relevant time period, not a Michigan resident. Thus, during the entire alleged fraud period, Respondent was eligible to receive those benefits. Accordingly, Respondent did not receive an overissuance of FAP benefits.

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.

There was no IPV in this case. Thus, Respondent is not subject to a disqualification.

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 with respect to her FAP benefits.
2. Respondent is not subject to a disqualification from receiving FAP benefits.
3. Respondent did not receive an overissuance of FAP benefits.

IT IS ORDERED that Respondent shall not be disqualified from receiving FAP benefits.

IT IS ORDERED that the Department must delete the alleged FAP overissuance from Respondent's case.

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

**Counsel for Respondent –
Via First-Class Mail:**

Marie K. DeFer
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Detroit, MI 48201

Via Email:

MDHHS-Wayne-49-Hearings
OIG Hearings
Recoupment
MOAHR

**Respondent –
Via First-Class Mail:**

[REDACTED]
[REDACTED]
[REDACTED]