



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: August 9, 2019
MOAHR Docket No.: 19-003684
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 August 1, 2019, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent failed to 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 49-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-49.

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. On [REDACTED], 2017, [REDACTED] Neil filed an application for FAP benefits with the State of Florida. On the application, Ms. [REDACTED] indicated that she was homeless and that her

household included herself and two other individuals, one of whom was Respondent. The application specifically stated that Ms. [REDACTED] was applying only for herself and not Respondent on more than one occasion. Ms. [REDACTED] application was approved, and she received FAP benefits from Florida through January 2018. Exhibit A, pp. 32-47.

2. On [REDACTED], 2017, Respondent submitted to the Department an application for FAP benefits. Respondent signed the application, certifying the truth of the information in the application and that he received, read, and understood his rights and responsibilities under the program. Included in the information Respondent acknowledged receiving was a publication titled Important Things to Know. The Important Things to Know publication informed Respondent that he must be truthful in all his statements to the Department and must report changes to the Department, including change in residence, within ten days of the change. Exhibit A, pp. 11-26.
3. On the application, Respondent indicated that he was homeless. Exhibit A, p. 13.
4. Respondent's application was approved, and he began receiving monthly FAP benefits from the Department. Exhibit A, p. 48.
5. For all times relevant to this matter, Respondent used all of his Department-issued FAP benefits in Michigan. Exhibit A, pp. 29-31.
6. Sometime in 2018, the Department received a PARIS Interstate Match showing that Respondent was receiving dual FAP assistance from the Department and Florida. The match document does not contain any substantive information as to when the alleged dual assistance occurred. Exhibit A, pp. 27-28.
7. During the course of the Department's investigation into Respondent's alleged dual assistance, the Department called Respondent in for an interview on March 20, 2019. After speaking about the allegations, Respondent drafted the following statement: "I applied for food stamps in Michigan [REDACTED] 2017. We moved to Florida April 2017 my added me to her case. I didn't have a case in [REDACTED] at the time. I didn't have a bridge card in Michigan. I didn't spend any benefits in Michigan." Exhibit A, p. 49.
8. The Department's OIG filed a hearing request on April 1, 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 Florida concurrently from September 1, 2017 through February 28, 2018. 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 September 1, 2017 through February 28, 2018, (fraud period), during which the Department issued Respondent \$962 in FAP benefits. Exhibit A, pp. 1-9, 48.
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 committed an Intentional Program Violation (IPV) with respect to FAP by collecting FAP benefits from both the Department and Florida 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 September 1, 2017 through February 28, 2018.

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 that Respondent withheld any information or made false statements to the Department. The April 2017 application that was filed in Florida was filed by Ms. [REDACTED] who indicated that she was homeless. She further indicated that her household included Respondent but specifically stated that she was not applying for FAP benefits for Respondent. There is no evidence to conclude that Ms. [REDACTED] approved FAP benefits case from Florida even included Respondent beyond an email from an unknown person in Florida asserting so. Even if Respondent was on the case, which cannot be concluded from the evidence on the record, it certainly was not due to any action of Respondent as he did not file for benefits from Florida and the application that was filed specifically excluded him from the application.

When Respondent applied for FAP benefits from the Department in [REDACTED] 2017, his application contained zero misrepresentations or material omissions. He was approved for FAP benefits and received them monthly thereafter. All of his benefits were used in Michigan. As a finding of an IPV requires, at a minimum, that there be a false statement or failure to report relevant information and this case involves neither, the Department is unable to meet its burden of proof. As the Department failed to establish all 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. Furthermore, the Department failed to show that Respondent received FAP benefits from more than one state during any given time period. 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

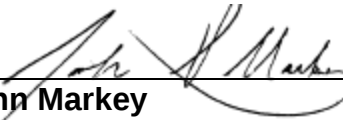
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

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

Via Email:

MDHHS-Wayne-49-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]