



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: December 26, 2019
MOAHR Docket No.: 19-009511
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 25, 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; 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).

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 FAP 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 July 19, 2019, 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 FAP program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in residency to the Department within 10 days.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is April 1, 2018 through August 31, 2018 (fraud period).
7. During the fraud period, Respondent was issued \$904.00 in FAP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$904.00.
9. This was 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 Service 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 overissuances 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 (October 2017), pp. 12-13.

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.

7 CFR 273.16(c); BAM 720, p. 1.

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

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because he received Michigan-issued FAP benefits at the same time she was issued FAP benefits in Illinois. Under Department policy, a person **cannot** receive FAP in more than one state for any month. BEM 222 (October 2016), p. 2. In support of its contention that Respondent committed an IPV, the Department presented an application submitted by Respondent on November 1, 2017, in which she acknowledged that he received the Information Booklet advising of “Things You Must Do” (which explained reporting change circumstances, including residency).

The Department presented two applications submitted by Respondent for benefits through the State of Illinois dated February 2, 2018 and March 8, 2018. In both applications, Respondent indicated that she was not receiving benefits from another state. The State of Illinois also provided correspondence to the Department to show that Respondent received and used FAP benefits from the State of Illinois from April 2018 through August 2018. Additionally, the Department presented a FAP transaction history which revealed that Respondent used her Michigan FAP benefits out of state from December 19, 2017 through November 18, 2018.

The Department presented a Michigan Eligibility Summary to show that on December 22, 2017, Respondent’s FAP benefits were authorized, effective November 1, 2017, and continued without interruption through August 31, 2018. The Department also submitted a Benefit Summary which showed that Respondent was issued FAP benefits from March 1, 2018 through August 31, 2018.

Respondent responded untruthfully on her application for Illinois benefits which led to the receipt of FAP benefits in two states. Accordingly, it is found that the Department has established that Respondent intentionally misled the Department for the purpose of maintaining FAP program benefits.

Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. 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. 16. 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. 16. 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 10 years for a FAP concurrent receipt of benefits. BAM 720, p. 16; 7 CFR 273.16(b)(1); 7 CFR 273.16(b)(11).

For a 10-year disqualification, the Department must establish that Respondent purposely misrepresented residency (or identity). BAM 720, p. 16. The Department did not allege that Respondent misreported Michigan residency on her Michigan application. Likewise, there was no evidence presented that Respondent misrepresented her identity or residency on her Illinois applications. The Department

appeared to allege that Respondent only failed to report a change in state of residency. For purposes of determining the length of IPV disqualification, a failure to report a change of residency state or receipt of out-of-state FAP benefits does not equate to a fraudulent misrepresentation of residency or identity. Because it has been found that Respondent committed an IPV and the Department confirmed that this is Respondent's first alleged IPV, it is found that Respondent is subject to a 12-month disqualification of FAP benefits.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. At the hearing, the Department established that the State of Michigan issued a total of \$904.00 in FAP benefits to Respondent during the fraud period. The Department alleges that Respondent was eligible for \$0.00 in FAP benefits during this period.

As previously stated, the Department also presented evidence to show that Respondent received FAP benefits from both the State of Michigan and the State of Illinois from April 1, 2018 through August 31, 2018. Therefore, the Department has established it is entitled to recoup the \$904.00 in FAP benefits it issued to Respondent during the fraud period.

DECISION AND ORDER

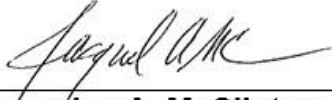
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of program FAP benefits in the amount of \$904.00.

The Department is ORDERED to initiate recoupment procedures for the amount of \$904.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent is subject to a 12-month disqualification from FAP benefits.

JAM/jaf



Jacquelyn A. McClinton
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

DHHS (via electronic mail)

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner (via electronic mail)

MDHHS-OIG-Hearings

Respondent (via first class mail)

[REDACTED]
[REDACTED]
[REDACTED]