



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: February 25, 2020
MOAHR Docket No.: 19-009996
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 February 24, 2020, from ██████████ Michigan. The Department was represented by Brent Brown, 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 benefits for Food Assistance Program (FAP)?

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 September 20, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. The Department previously established a debt for the overissuance on October 23, 2018.
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 after filing an application on December 27, 2017.
4. The Respondent began employment with [REDACTED] on [REDACTED] 2018 and received his first pay on [REDACTED] 2018; Respondent continued to be employed through [REDACTED] 2018. The Respondent failed to report his employment and income to the Department at any time and continued to receive FAP benefits.
5. Respondent was made aware of the responsibility to report changes in income and starting employment which are actions that may affect his eligibility for FAP benefits when he completed his application for FAP benefits on December 27, 2017.
6. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. The Department's OIG indicates that the time period it is considering the fraud period is April 1, 2018 through September 30, 2018 (fraud period).
8. The Department has established a debt in the amount of \$1,071 resulting from the Respondent's failure to report his employment and income received from [REDACTED] beginning [REDACTED] 2018 and his first paycheck received on [REDACTED] 2018. The debt was established by the Department on October 23, 2018.
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.

The Adult Services Program (ASP), which provides for Adult Home Health (AHH) benefits, is established by Title XIX of the Social Security Act, 42 USC 1346 *et seq*, 42 CFR 440.170(f), the Social Welfare Act, and MCL 400.14(1)(p). The Department of Human Service (formerly known as the Department of Human Services), along with the Michigan Department of Community Health (DCH), administers independent living services (home help) for personal care services pursuant to the Medicaid State Plan.

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 2016), p. 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.

BAM 700 (October 2016), p. 8; BAM 720, p. 1.

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

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, or committed any act constituting a violation of the Supplement Nutritional Assistance Program (SNAP) regulations or State Statutes for the purpose of establishing, maintaining, using, presenting, transferring, receiving, possessing, trafficking, increasing or preventing reduction of program benefits or eligibility. BAM 720, pp. 1, 12-13 (emphasis in original); see also 7 CFR 273.16(c) and(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.

In this case, the Department has alleged that Respondent intentionally failed to report his income from [REDACTED] which he began on [REDACTED] 2018, approximately a month and a half after applying for FAP benefits on December 27, 2017. Exhibit A, pp. 47-49. In the online application which he filed, Respondent acknowledged his rights and responsibilities to report changes on line within 10 days of the change and was advised that the type of changes which he must report included employment starts, stops (within 10 days of receiving first/last payment) or changes and that he received, reviewed and agree with the sections in the assistance application Information Booklet explaining Things You Must Do. Exhibit A, p. 27. The Department alleged that the employment income was not reported to the Department in order to maintain his FAP benefits. Employment income received by the client is considered in the calculation of a client's FAP eligibility and amount of benefits. BEM 556 (July 2013), pp. 1-6; 7 CFR 273.9(a). FAP recipients who are not simplified reporters are required to report starting or stopping employment and changes in circumstance that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. BAM 105 (October 2016), p. 11; 7 CFR 273.10(b)(1)(i).

In this case the Department presented evidence that Respondent began employment with [REDACTED] on [REDACTED] 2018 which continued through [REDACTED] 2018. There is no record of the Respondent providing any check stubs to the Department at any time and after receiving his first pay on February 27, 2018. Exhibit A, pp. 47-49. The Respondent did not appear at the hearing to demonstrate otherwise. The Respondent continued to receive FAP benefits even though he had income which made him otherwise ineligible. On his application he reported receiving no income. Thus, despite receiving notification in his application of his responsibility to report changes in income and employment, Respondent failed to report the income he received over a period of approximately 7 months and continued to receive FAP benefits based on his receipt of no income as established by the FAP benefit issuance summary provided by the Department. Exhibit A, p. 50. Based upon the facts presented, the Department has established by clear and convincing evidence that Respondent intentionally withheld reporting his income so as to continue receiving his full FAP allotment and that Respondent committed an IPV.

Disqualification

A client who is found to have committed a IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15. 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. 16; 7CFR273.16(b)(1) and (5). 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.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV. This was Respondent's first IPV. Therefore, she is subject to a one-year disqualification under the FAP.

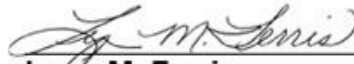
DECISION AND ORDER

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.

It is ORDERED that the Department shall initiate steps to ensure that Respondent be disqualified from receiving Food Assistance for a period of 12 months.

LMF/jaf



Lynn M. Ferris
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

Petitioner

MDHHS-OIG-Hearings

DHHSSharnita Grant
MDHHS-[REDACTED]-Hearings**Respondent**[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]