



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

██████████
██████████
██████████ MI ██████████

Date Mailed: January 31, 2020
MOAHR Docket No.: 19-010000
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 January 29, 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 the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. 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 seeking to disqualify Respondent from FAP due to a failure to report earned income.
2. Respondent was a recipient of FAP benefits issued by the Department.

3. Respondent **was** informed of the responsibility to report changes in household circumstances to the Department.
4. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. Respondent began employment with [REDACTED] (Employer) on October 8, 2015.
6. She received her first paycheck from Employer on October 30, 2015.
7. Respondent did not report her employment to the Department.
8. The Department's OIG indicates that the time period it is considering the fraud period is January 2016 through March 2016 (fraud period).
9. The Department previously established a debt in the amount of \$544.00 based upon the same facts as this on June 19, 2018.
10. This was Respondent's **first** alleged IPV.
11. A notice of hearing was mailed to Respondent at the last known address and **was** 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.

As a preliminary matter, after the current hearing was scheduled, the Michigan Office of Administrative Hearings and Rules (MOAHR) mailed Respondent the Notice of Disqualification Hearing (Notice) via first class mail at the address identified by the Department as Respondent's address. Before the hearing, the Notice was returned to MOAHR by the United States Postal Service as undeliverable. At the hearing, the Department testified that after conducting an address search, it concluded that the address provided to MOAHR for Respondent was the most current address. In addition, the Department last visited Respondent at the address of record in September

2019. When notice of a FAP IPV hearing is sent using first class mail and is returned as undeliverable, the hearing may still be held. 7 CFR 273.16(e)(3); BAM 720, p. 12. Under the circumstances presented, where there was no evidence presented that Respondent had a more recent mailing address and where the Department's investigation led it to conclude that the address provided to MOAHR for the Notice of Hearing was the best available address for Respondent, the hearing proceeded with respect to the alleged FAP IPV.

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 OIs 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. 5, 12-13; ASM 165 (August 2016).

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 2018), 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, misrepresented information, or withheld facts or committed any act constituting a violation of Supplemental 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); 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 asserts that Respondent failed to report her earned income from Employer to the Department. Earned income received by the client is considered in the calculation of a client's FAP eligibility and amount of benefits. BEM 500 (January 2016); BEM 556 (July 2013), pp. 2-3; 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 ten days of receiving the first payment reflecting the change. BAM 105 (July 2015), p. 8; 7 CFR 273.10(b)(1)(i). In addition, clients must completely and truthfully answer all questions on forms and in interviews. BAM 105, p. 8; 7 CFR 273.2(b)(iii).

Respondent completed an Application for benefits on April 19, 2015 indicating that she was not employed and had no income. Respondent signed the form and acknowledged her rights and responsibilities as a program recipient including her obligation to report changes in household circumstances to the Department within ten days. As a result of the Application, the Department issued FAP benefits to Respondent. On October 8, 2015, Respondent began working for Employer. She continued in the employment through at least December of 2017. According to Department records, Respondent never reported the employment to the Department. The Department only became aware of the income due to a Wage Match. A Wage Match occurs when Department records match with records obtained from employers by the Unemployment Insurance Agency based upon Social Security numbers. BAM 802 (January 2016), p. 1. When a client's earnings with the Department do not match the records from the Unemployment Insurance Agency, then a Wage Match is created to clarify the records from the client and employer. BAM 802, pp. 1-2.

The Department previously established a debt in the amount of \$544.00 based on the same facts as this case on February 12, 2019.

After reviewing all of the evidence in this case, the Department has met its burden of proof by clear and convincing evidence that Respondent committed an IPV by failing to report her employment income for more than a year as the only reason to go so long without reporting it is in order to maintain the benefit.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15. Clients are disqualified for 10 years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, 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; 7 CFR 273.16(b)(1) and (5). A disqualified recipient remains a member of an active group as long as he 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 Respondent be disqualified from FAP for a period of **12 months**.

AMTM/jaf



Amanda M. T. Marler
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

DHHS

Susan Noel
MDHHS-██████████-Hearings
L Bengel
Policy Recoupment

Respondent

██████████
████████████████████
██████ MI ██████████