



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] MI [REDACTED]

Date Mailed: February 18, 2020
MOAHR Docket No.: 19-012140
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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 February 13, 2020 from [REDACTED] Michigan. The Department was represented by Brent Brown, Regulation Agent of the Office of Inspector General (OIG). The Respondent was self-represented. Translation services were provided by Maher Eleia.

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) and Family Independence Program (FIP)?

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 October 23, 2019 seeking to disqualify Respondent from FAP and FIP based upon an IPV by failing to report his employment income.
2. Respondent immigrated to the United States in July 2016.

3. Respondent does not read or speak English.
4. Respondent can read and speak Arabic.
5. Respondent was a recipient of FIP benefits issued by the Department as a result of his Application dated September 23, 2016.
6. Respondent had assistance in filling out his Application from Catholic Charities of Southeast Michigan.
7. Respondent was also a recipient of FAP benefits issued by the Department.
8. Respondent was informed of the responsibility to report changes in household circumstances by his [REDACTED] [REDACTED] caseworker.
9. Respondent was unaware that [REDACTED] was not associated with the Department or that they were separate entities.
10. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
11. The Department's OIG indicates that the time period it is considering the fraud period is February 2017 through June 2017 (fraud period).
12. On December 3, 2018, the Department established a debt for FIP in the amount of \$3,153.00 and FAP in the amount of \$2,259.00 based upon the same facts as this case.
13. This was Respondent's **first** alleged IPV.
14. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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 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 committed an IPV of FIP and FAP by failing to report his employment income. Respondent asserts that the problem arose as a result of a misunderstanding and that he did not intend to commit fraud. Earned income received by the client is considered in the calculation of a client's FIP and FAP eligibility and amount of benefits. BEM 500 (January 2016); BEM 556 (July 2013), pp. 2-3; 7 CFR 273.9(a). FIP and 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 (October 2016), 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. 6; 7 CFR 273.2(b)(iii).

In July 2016, Respondent immigrated to the United States. On September 23, 2016, Respondent filed an Application for FIP benefits with the assistance of Catholic Charities of Southeast Michigan. On his Application, Respondent indicated that he prefers [REDACTED] as both his spoken and written language. At no time did the Department provide Respondent with correspondence, instructions, or information about the programs in [REDACTED]

In December 2016, Respondent began working for [REDACTED] (Employer). On December 12, 2016, Respondent received his first paycheck from Employer. Respondent continued working for Employer until June 22, 2017 and received his final paycheck on that day.

On June 27, 2017, the Department received Respondent's completed Redetermination on which he listed his employment with Employer. Prior to this disclosure, Respondent had not informed the Department of his employment.

At the hearing, Respondent explained that his failure to report his wages to the Department was due to a misunderstanding in how social services were provided. Since Respondent had been a recent immigrant to the United States, he was unfamiliar with how social services works or how the process works. When he applied for benefits, Respondent's caseworker from ██████ advised him that he needed to report his income or employment and report it on a weekly basis. When Respondent began his employment, he began reporting his employment weekly to his ██████ caseworker. Respondent was unaware that his ██████ caseworker did not work for the Department. He did not know that they were separate entities. Respondent only became aware of the problem when the Department began the process of establishing and recouping the overissuance. When the process started, Respondent went to his ██████ caseworker and asked what was going on only to be asked by the caseworker why he did not report his income to the Department. Respondent's truthful statements on his Redetermination only lend to his credibility that he truly misunderstood the dynamics of the situation.

Respondent's testimony is credible and corroborated by the fact that he received assistance in filling out the Application, indicated on the Application that his preferred written and spoken language was ██████ and he had an ██████ translator at the hearing. Respondent did not have the requisite intent to establish an IPV; he simply misunderstood. After reviewing all of the evidence, the Department has not met its burden of proof by clear and convincing evidence that Respondent committed an IPV by failing to report his income to the Department on a timely basis.

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 not satisfied its burden of showing that Respondent committed an IPV. Therefore, he is not subject to a period of disqualification under FIP or 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 not** established by clear and convincing evidence that Respondent committed an IPV.

It is ORDERED that Respondent is not subject to a period of disqualification from FIP or FAP.



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-[REDACTED]-Hearings
L Bengel
Policy Recoupment

Respondent

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]