



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: February 12, 2020
MOAHR Docket No.: 19-012173
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 5, 2020 from Detroit, Michigan. The Department was represented by Debra Echtenaw, Regulation Agent of the Office of Inspector General (OIG). The Respondent was self-represented and had his father, [REDACTED] appear as a witness.

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 October 22, 2019, seeking to disqualify Respondent from FAP as a result of an IPV for failure to report income.
2. Respondent was a recipient of FAP benefits issued by the Department as a result of his Application dated [REDACTED] 2013.

3. Respondent is blind, deaf, and has mental health concerns; despite these disabilities, he was able to fully participate in the hearing.
4. Respondent had assistance filing his Application in 2013 from a staff member of [REDACTED].
5. Respondent appeared confused about the responsibilities of the Department, an employer, versus himself in reporting changes in income.
6. The Department's OIG indicates that the time period it is considering the fraud period is September 2013 through February 2014 (fraud period).
7. The Department established a claim for overissued FAP benefits based upon the same facts in this case on September 25, 2019.
8. This was Respondent's **first** alleged IPV.
9. 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 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 FAP by failing to report his income. Earned income received by the client is considered in the calculation of a client's FAP eligibility and amount of benefits. BEM 500 (July 2013); 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 2013), 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).

Respondent completed an Application for FAP benefits on [REDACTED] 2013 with the assistance of someone from [REDACTED]. On May 2, 2013, the Department issued a Notice of Case Action to Respondent informing him that he was eligible for FAP benefits in the amount of \$200.00 per month effective May 1, 2013 for a group size of one with zero income. The notice included a reminder to report changes in household circumstances within ten days as well as a Change Report to facilitate the reporting of any changes. On [REDACTED] 2013, Respondent began employment with [REDACTED] (Employer). On July 7, 2013, Respondent received his first paycheck. He continued in that employment until October 17, 2016. On October 5, 2013, the Department issued a Notice of Case Action to Respondent alerting him that his FAP benefits would reduce to \$189.00 based upon a change in policy. In [REDACTED] 2013, Respondent was undergoing the review process for his Medical Assistance (MA) Program benefits and received an extension of the applicable due date. In February 2014, Respondent's FAP benefits closed, but neither party is certain why the benefits closed. The Department case file is absent of any clear indicator of what happened. In 2019, the Department was investigating Respondent as it related to another case. While reviewing that case, the Department determined that Respondent had unreported income as discussed by this case and began the process of establishing an overissuance as well as an IPV.

Respondent argues that his FAP benefits closed by August 2013 because of the 10-day reporting requirement. While Department records show that Respondent was issued FAP benefits, the Department did not present any evidence that Respondent actually used the FAP benefits. If Respondent did not use the benefits, it's possible that he did not receive the benefits or was unaware that benefits were being issued to him which is consistent with his testimony. In addition, the Department is uncertain when Respondent reported the income but believes he reported it at some point. It is possible that Respondent reported the income with the [REDACTED] 2013 MA renewal process which prompted the closure of his FAP benefits in February 2014. It is possible that the FAP benefits closed in February 2014 for another reason altogether and he reported it at a much earlier time but the Department failed to take action until February 2014. Other than his arguments that he did not use the FAP benefits because his case closed earlier than the what the Department asserts, Respondent has no specific recollection of what happened in this case because all of the events outlined here happened more than six years ago. Finally, it is clear that Respondent has some confusion about each

parties' responsibilities in managing program benefits which may have been exacerbated by his blindness, deafness, or mental health concerns. Given that the Department's records and evidence are lacking as to when Respondent reported the income, why his benefits closed in February 2014; and there is no evidence that Respondent used the FAP benefit after his employment started in [REDACTED] 2013 in addition to Respondent's disabilities, the Department has not met its burden of proof by clear and convincing evidence that Respondent committed an IPV.

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 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 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

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