



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: October 20, 2020
MOAHR Docket No.: 19-013452
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 October 6, 2020, from Lansing, Michigan. The Department was represented by Jennifer Allen, 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 over issuance (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 12 months?

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 November 22, 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 FAP receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department. Department Exhibit 1, pg. 203.
4. On the Online Assistance Application, DHS 1171, submitted by Respondent on [REDACTED], 2015, [REDACTED], 2015, [REDACTED], 2016, [REDACTED], 2017, [REDACTED], 2017, and [REDACTED], 2018, the Respondent reported that she understood the responsibility to report changes in household composition to the Department within 10 days. Department Exhibit 1, pgs. 15-196.
5. Respondent was aware of the responsibility to report changes in household composition where she failed to report that her son, [REDACTED] was not in the home, but receiving MA benefits in Illinois. Department Exhibit 1, pgs. 197-198, 203-210.
6. Respondent had no 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 November 1, 2015 through June 30, 2016 and May 1, 2018 through June 30, 2018 for FAP (fraud period). Department Exhibit 1, pgs. 211-233.
8. During the fraud period, Respondent was issued \$2,874.00 and \$704.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$1,480.00 and \$384.00 in FAP benefits during this time period.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,714.00.
10. This was Respondent's first alleged IPV for FAP.
11. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office 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 Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The

Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

Effective January 1, 2016, 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 or more, or
 - the total amount is less than \$500, 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 (1/1/16), 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; BAM 720.

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, p. 6; 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. BAM 720, p. 1 (emphasis in original); see also 7 CFR 273.16(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.

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; BEM 708. 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. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708. 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.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700.

In the instant case, the Respondent was a recipient of FAP benefits issued by the Department. Department Exhibit 1, pg. 203. On the Online Assistance Application, DHS 1171, submitted by Respondent on [REDACTED], 2015, [REDACTED], 2015, [REDACTED], 2016, [REDACTED], 2017, [REDACTED], 2017, and [REDACTED], 2018, the Respondent reported that she understood the responsibility to report changes in household composition to the Department within 10 days. Department Exhibit 1, pgs. 15-196. Respondent was aware of the responsibility to report changes in household composition where she failed to report that her son, [REDACTED] was not in the home, but receiving MA benefits in Illinois.

Department Exhibit 1, pgs. 197-198, 203-210. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

The Department's OIG indicates that the time period it is considering the fraud period is November 1, 2015 through June 30, 2016 and May 1, 2018 through June 30, 2018 for FAP (fraud period). Department Exhibit 1, pgs. 211-233. During the fraud period, Respondent was issued \$2,874.00 and \$704.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$1,480.00 and \$384.00 in FAP benefits during this time period. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,714.00.

This was Respondent's first alleged IPV for FAP. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable. As a result, the Respondent received an over issuance of FAP benefits of \$1,714.00 that the Department is required to recoup. Department Exhibit 1-233.

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 did commit an intentional program violation (IPV).
2. Respondent did receive an OI of FAP benefits in the amount of \$1,714.00.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$1,714.00 in accordance with Department policy.
4. It is FURTHER ORDERED that Respondent be disqualified from the FAP program for a period of 12 months.

Carmen G. Fahie

CF/nr

Carmen G. Fahie
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.

Petitioner

OIG- via electronic mail
PO Box 30062
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48909-7562

Kalamazoo County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

DHHS

Renee Olian
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49001

Respondent

[REDACTED] - via first class mail
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[REDACTED]