



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]

Date Mailed: June 28, 2019
MOAHR Docket No.: 19-003881
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 June 24, 2019, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG), and Jennifer Tanney, Family Independence Specialist. 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). During the hearing, a 52-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-52.

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) with respect to FAP?
3. Should Respondent be disqualified from receiving FAP benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Respondent is illiterate and speaks Spanish with limited to no English proficiency.

On [REDACTED] 2017, Respondent submitted to the Department an application for FAP benefits. Respondent was assisted by Ms. Tanney, who speaks Spanish. Exhibit A, pp. 12-33.

2. Respondent signed the application. By signing the application, Respondent certified that he received, reviewed, and understood the information contained within the DHHS assistance application Information Booklet. Exhibit A, p. 31.
3. Based on the information contained in the application, Respondent was approved for FAP benefits through April 30, 2018. Exhibit A, p. 52.
4. On or about November 1, 2017, Respondent moved to Texas. He remained a Texas resident through at least April 30, 2018. Exhibit A, pp. 35-44.
5. Respondent did not report his move to Texas to the Department.
6. Respondent continued to receive monthly FAP benefits from the Department through April 30, 2018. Exhibit A, p. 52.
7. The Department's OIG filed a hearing request on April 8, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by failing to report the move to Texas and continuing to receive and use his monthly FAP benefits from the Department. Exhibit A, pp. 1-9.
8. The Department's OIG indicates that the time period it is considering the fraud period is December 1, 2017 through April 30, 2018, during which the Department issued to Respondent \$960 in FAP benefits. The Department alleges that Respondent was not entitled to any FAP benefits from the Department during that time. Exhibit A, pp. 1-9; 52.
9. This was Respondent's **first** alleged IPV. The Department requested that Respondent be disqualified from receiving FAP benefits for a period of one year. Exhibit A, pp. 1-9.
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.

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 seeks an IPV based on Respondent's continued receipt and use of Michigan-issued FAP benefits after Respondent moved out of state. The Department contends that Respondent was ineligible to receive FAP benefits after he moved and that the failure to report his change in residency amounted to an IPV.

Respondent applied for FAP benefits on May 31, 2017. At that time, Respondent was a Michigan resident. Respondent's application was approved, and Respondent began receiving \$192 per month in FAP benefits. Respondent's case was certified through April 30, 2018.

Starting October 31, 2017, Respondent's FAP benefits were redeemed exclusively in Texas. During the hearing, the Department presented sufficient evidence to determine that as of the first week of November 2017, Respondent was no longer a Michigan resident and was, rather, a Texas resident.

Relying upon the above evidence and presumably, based upon policy found in BEM 220 (January 2016), p. 1, and BEM 212 (January 2017), p. 3, the Department determined that Petitioner was no longer a Michigan resident.

Federal Regulations provide with respect to FAP recipients Residency requirements that:

- (a) *A household shall live in the State in which it files an application for participation.* The State agency may also require a household to file an application for participation in a specified project area (as defined in § 271.2 of this chapter) or office within the State. No individual may participate as a member of more than one household or in more than one project area, in any month, unless an individual is a resident of a shelter for battered women and children as defined in § 271.2 and was a member of a household containing the person who had abused him or

her. Residents of shelters for battered women and children shall be handled in accordance with § 273.11(g). *The State agency shall not impose any durational residency requirements.* The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. *Nor shall residency require an intent to reside permanently in the State or project area.* Persons in a project area solely for vacation purposes shall not be considered residents.

7 CFR 273.3 (emphasis added). Based upon the above residency federal regulation, there is no requirement that an eligible household reside in Michigan, except at the time of application. In addition, there is no requirement that residency be based upon the recipient's intent to reside permanently in Michigan. The Department's allegation is that Respondent failed to report his move to Texas. The Department cited no federal requirement or regulation that prohibits out-of-state use of Michigan FAP benefits by a recipient. It did not present any evidence that Respondent was not a resident of Michigan at the time of his application.

BEM 220 requires that a person be a Michigan resident for FAP eligibility and provides that a person is a resident while living in Michigan for any purpose other than a vacation even if there is no intent to remain in the state permanently or indefinitely. BEM 220, p. 1. In order to be in compliance with the federal regulations, this rule can only apply at application. No evidence was presented that Respondent lacked Michigan residency at application.

BEM 212 defines a temporary absence from a group as having lasted or expecting to last 30 days or less. BEM 212, p. 3. The Department has utilized BEM 212 to establish a loss of residency, but it does not discuss residency, the policy discusses a removal of an individual from a group. In order for BEM 212 to be in compliance with federal regulations, it cannot be interpreted to amount to a residency requirement. BEM 212 can only apply to the group at the time of application since there is no federal requirement to maintain a residence in any given state. A FAP recipient is free to use their FAP benefit in any state. So long as there is no misrepresentation of residency at the time of application, there can be no IPV for failure to maintain Michigan residency or failure to inform the Department about a change in residency because it is not a change that affects the client's eligibility.

Based upon the foregoing, the Department has not established by clear and convincing evidence that Respondent committed an IPV with respect to FAP based upon a failure to report a change in residency.

Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. 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. Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA or FAP. BAM 720, p. 13. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and 10 years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

As discussed above, the Department has not satisfied its burden of proof in establishing an IPV with respect to FAP. Therefore, the Respondent is not subject to a period of disqualification.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6.

In this case, the Department sought the imposition of an IPV due to Respondent's lack of Michigan residency. As discussed above, the Department failed to establish that Respondent was ineligible for FAP due to lack of residence and did not establish an IPV. FAP clients are permitted the use of their FAP EBT benefits anywhere that SNAP benefits are accepted. Therefore, the Department has not established an OI or that Respondent received more benefits than he was entitled to receive.

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.
2. Respondent **did not** receive an OI of program benefits from the FAP.

The Department is ORDERED to delete the OI and cease any recoupment action.

