



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: October 11, 2019
MOAHR Docket No.: 19-004369
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 October 7, 2019 from Detroit, Michigan. The Department was represented by Taylor Jenkins, Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and was represented by [REDACTED], Attorney. During the hearing, a 135-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-135.

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. On July 20, 2017, Respondent submitted to the Department an application for FAP benefits. Exhibit A, pp. 15-44.

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. Included in the Information Booklet were instructions to report any changes to residency within 10 days after the change. Exhibit A, pp. 25-26.
3. Based on the information contained in the application, Respondent was approved for FAP benefits. The Notice of Case Action informing Respondent of his benefits also informed Respondent that he had a duty to report any changes to his residence within ten days of the change. Exhibit A, p. 45-50.
4. In the end of July 2017, Respondent moved out of Michigan. He has not been a Michigan resident since moving. Exhibit A, pp. 113-131.
5. Respondent did not report his move to the Department.
6. Respondent continued to receive monthly FAP benefits from the Department through May 31, 2018. Exhibit A, pp. 133-134.
7. On September 19, 2017, Respondent submitted to the State of Oregon an application for FAP benefits. On the application, he indicated that he was an Oregon resident and intended to remain so. Exhibit A, pp. 81-97.
8. Respondent was approved for FAP benefits in Oregon. Exhibit A, pp. 113-125.
9. After being approved for FAP benefits from Oregon, Respondent used his FAP benefits from both the Department and Oregon exclusively outside the State of Michigan. Exhibit A, pp. 113-131.
10. The Department's OIG filed a hearing request on [REDACTED], 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 and continuing to receive and use his monthly FAP benefits from the Department. Exhibit A, pp. 1-10.
11. The Department's OIG indicates that the time period it is considering the fraud period is September 19, 2017 through May 31, 2018, during which the Department issued to Respondent \$1,346 in FAP benefits. The Department alleges that Respondent was not entitled to any FAP benefits from the Department during that time. Exhibit A, pp. 1-10; 134-134.
12. 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. 1-10.
13. 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.

The Department's position in this matter is that Respondent's failure to report his move out of state while continuing to be receive FAP benefits from the Department amounted to an Intentional Program Violation (IPV) with respect to FAP.

Overissuance

When an ineligible client is issued benefits or an eligible client is issued more benefits than the client is entitled, the Department must attempt to recoup the overissuance. BAM 700 (October 2016), p. 1; 7 CFR 273.18.

Only residents of Michigan are eligible to receive benefits from the Department. BEM 220 (January 2016), p. 1; 7 CFR 273.18. "A household certified to participate in the [FAP] is required to report in a manner prescribed by the [Department] if the household no longer resides in the State in which it is certified." 7 USC 2014a. Once the Department determines, based on reliable information, that a household is no longer a resident of the state, the Department "shall not delay terminating the household's participation in order to provide advance notice." 7 CFR 273.13(b)(13).

In this case, the Department showed by clear and convincing evidence that Respondent was not a Michigan resident as of September 19, 2017, at the latest. This conclusion is based on the facts that Respondent's FAP benefits were exclusively used outside Michigan and Respondent's September 19, 2017 Oregon assistance application wherein Respondent admittedly certified that he was an Oregon resident as of that date.

Thus, Respondent was no longer a Michigan resident and was ineligible to receive benefits as of the first of September 19, 2017. However, because of Respondent's failure to report his move, the Department issued for Respondent's benefit FAP benefits of \$1,346 from September 19, 2017 through May 31, 2018. As Respondent was ineligible to receive those benefits, they are considered an overissuance. In total, the overissuance was \$1,346.

Intentional Program Violation

The Department's policy in effect at the time of Respondent's alleged IPV defined an IPV as an overissuance in which the following three conditions exist: (1) the client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination; (2) the client was clearly and correctly instructed regarding his or her reporting responsibilities; and (3) the client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill his or her reporting responsibilities. BAM 720 (October 2017), p. 1; 7 CFR 273.16(c).

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; see also 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence which is so clear, direct, weighty, and convincing that it enables a firm belief as to the truth of the allegations sought to be established. *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (citing *In re Jobes*, 108 NJ 394 (1987)).

Respondent was required to report changes in his group's circumstances, including changes to residency, to the Department within 10 days of the date of the change. BAM 105 (October 2017), pp. 11-12; 7 CFR 273.12(a)(1)-(2); 7 USC 2014a. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days.

Respondent failed to report that he moved. Had Respondent followed the reporting rules, Respondent's FAP benefits case would have closed, effective October 1, 2017, at the very latest. Thus, Respondent's failure to report the change resulted in Respondent receiving benefits to which he was not entitled.

The only remaining issue is whether the Department showed by clear and convincing evidence that Respondent intentionally withheld the information for the purpose of maintaining his program benefits. On that question, the Department failed to meet its burden of proof. Respondent's failure to report the move to the Department is more reasonably viewed as a negligent oversight. That conclusion is based largely on the fact that at the time this all happened, Respondent was homeless and experiencing a time of substantial chaos. Respondent convincingly testified that his actions were not in furtherance of any fraudulent scheme. Rather, they were unknowingly wrongful. The Department has not proven by clear and convincing evidence that Respondent committed an Intentional Program Violation.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving FAP benefits. BAM 720, pp. 15-16; 7 CFR 273.16(b). In general, clients are disqualified 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. A ten-year disqualification is imposed if a client makes a fraudulent statement or representation regarding residence in order to receive concurrent benefits from more than one state. BAM 720, p. 16; BEM 203 (October 2017), p. 1.

Respondent did not commit an IPV with respect to his FAP benefits case. Therefore, Respondent is not subject to a one-year disqualification from receiving FAP benefits.

DECISION AND ORDER

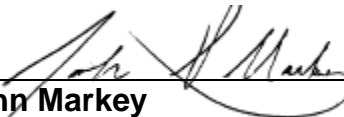
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has not established by clear and convincing evidence that Respondent committed an IPV with respect to his FAP benefits.
2. Respondent is not subject to a one-year disqualification from receiving FAP benefits.
3. Respondent received an overissuance of FAP benefits in the amount of \$1,346 that the Department is entitled to recoup and/or collect.

IT IS ORDERED that Respondent shall not be disqualified from receiving FAP benefits for a period of one year.

IT IS ORDERED that the Department may initiate recoupment and/or collection procedures for the FAP overissuance amount of \$1,346 established in this matter less any amounts already recouped or collected.

JM/cg



John Markey
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

Via Email:

MDHHS-Washtenaw-20-Hearings
OIG Hearings
Recoupment
MOAHR

**Respondent –
Via First-Class Mail:**

[REDACTED]
[REDACTED]
[REDACTED]

**Counsel for Respondent –
Via First-Class Mail:**

[REDACTED]
[REDACTED]
[REDACTED]