



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 23, 2019
MOAHR Docket No.: 19-004605
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 October 21, 2019, from Detroit, Michigan. The Department was represented by Gary Shuk, 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 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)?
3. Should Respondent be disqualified from receiving benefits for 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 [REDACTED], 2019 seeking to disqualify Respondent from the FAP due to an IPV by failing to report earned income.

2. Respondent was a recipient of FAP benefits issued by the Department.
3. Respondent **was informed** of the responsibility to report changes in household circumstances to the Department.
4. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. On July 28, 2016, Respondent completed a Redetermination and submitted it to the Department indicating that she had no sources of income.
6. On January 16, 2017, Respondent began employment with [REDACTED] (Employer) and continued in the employment until at least January 3, 2019.
7. On March 31, 2017, Respondent received her first paycheck from Employer in the amount of \$3,216.15.
8. On August 3, 2017, Respondent submitted a completed Redetermination and submitted it to the Department on which she indicated that her only source of income was child support.
9. The Department's OIG indicates that the time period it is considering the fraud period is May 2017 through August 2017 (fraud period).
10. The Department previously established a claim for FAP benefits based upon the same facts as this case.
11. This was Respondent's **first** alleged IPV.
12. 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 alleges that Respondent intentionally failed to report her employment income from Employer resulting in benefits she was not entitled to receive for the FAP. Earned income received by the client are considered in the calculation of a client's FAP eligibility and amount of benefits. BEM 501 (July 2016); BEM 556 (July 2013), pp. 1-6; 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 (October 2016), p. 11; 7 CFR 273.10(b)(1)(i).

Respondent completed a Redetermination for FAP benefits on July 28, 2016 indicating that she had no sources of income. On the Redetermination, Respondent wrote "I am still not working but I will be starting a job on Sept. 6th, 2016 I will send you the info when I get it." Through Respondent's statement, she acknowledged her understanding of the duty to report the start of employment.

On January 16, 2017, Respondent was hired by Employer. On March 31, 2017, Respondent received her first paycheck from Employer in the amount of \$3,216.15. Respondent continued in the employment through at least January 2019 and received a biweekly paycheck. The Department has no record of Respondent ever reporting this employment to the Department. The Department only became aware of the employment as part of a case update late in 2017.

On August 3, 2017, Respondent submitted a completed Redetermination to the Department on which she indicated that the only source of income for her household was from child support. In addition, she wrote on the form "everything is the same no change."

During the fraud period, Respondent received a full FAP benefit rate of \$511.00 for a group size of three. If Respondent had reported any of her income from employment, she would have received a lesser benefit rate because the full benefit rate is based upon \$0.00 net income. As a result, the Department previously establish a claim for overissued FAP benefits. In addition, since Respondent failed to report the income, the Department has met its burden of proof by clear and convincing evidence that Respondent committed an IPV of the FAP.

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 satisfied its burden of showing that Respondent committed an IPV. This was Respondent's first IPV. Therefore, she is subject to a one-year disqualification under the 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** established by clear and convincing evidence that Respondent committed an IPV.

It is ORDERED that Respondent be disqualified from FAP for a period of **12 months**.



Amanda M. T. Marler
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

AM/cg

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-Genesee-Union St.- Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

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