



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: September 30, 2019  
MOAHR Docket No.: 19-005699  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

**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 September 25, 2019, from Detroit, Michigan. The Department was represented by Derrick Gentry, Regulation Agent of the Office of Inspector General (OIG). Respondent was present and represented herself.

**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 Food Assistance Program (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 [REDACTED], 2019, to establish respondent committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.

4. Respondent was aware of the responsibility to report changes in her circumstances to the Department, such as changes in employment and income.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is September 1, 2016 through February 28, 2017 (fraud period).
7. The Department has already established a FAP overissuance in connection with this matter.
8. This was Respondent's first alleged IPV.
9. A notice of hearing was mailed to Respondent at the last known address and was 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 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 (October 2017), pp. 12-13

### **Intentional Program Violation**

Suspected IPV means an overissuance 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), pp. 7-8; 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 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). The federal regulations define an IPV as: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Supplemental Nutrition Assistance Program (SNAP), SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing for trafficking of SNAP benefits or Electronic Benefit Transfer (EBT) cards. 7 CFR 273.16(c). 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 committed an IPV of her FAP benefits because she failed to notify the Department when she secured employment. While this evidence may be sufficient to establish that Respondent may have been

overissued benefits, to establish an IPV, the Department must present clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of maintaining benefits.

In support of its contention that Respondent committed an IPV, the Department presented an application Respondent submitted to the Department on March 28, 2016. The Department asserts that when completing the application process, Respondent acknowledged that she had received the Information Booklet advising her regarding "Things You Must Do" which explained reporting changes in circumstances, including employment. Additionally, the Department presented a redetermination submitted by Respondent on February 14, 2017, where she reported income/employment at [REDACTED]. The Department testified that the February 14, 2017 redetermination was the first time that Respondent notified the Department that she was employed.

The Department presented a work number report showing Respondent began working at [REDACTED] on June 13, 2016. Respondent received her first paycheck on July 8, 2016 and was continuously paid throughout the remainder of the fraud period.

Respondent did not deny that she failed to report the income. Respondent stated that she could not recall what occurred in 2016. Respondent surmised that she failed to report the income because she believed she only had to report changes in her circumstances at the time of her yearly FAP review. Respondent testified that she was aware the her FAP benefits were based on income.

The Department presented Respondent's Benefit Issuance Summary which showed she was issued FAP benefits throughout the fraud period. Respondent was hired in June 2016 and continued to receive FAP benefits until February 2017, without reporting her income. Respondent was aware that her FAP benefits were based on income. Respondent's explanation as to why she failed to report the income was not reasonable. Respondent allowed a significant time period to lapse while she was employed without reporting the information to the Department. This indicates Respondent was intentionally withholding information regarding her employment to receive benefits for which she was not entitled. Therefore, the Department established by clear and convincing evidence that Respondent intentionally withheld facts for the purpose of maintaining FAP benefits, and thus, it has established that she committed an IPV in connection with her FAP case.

### **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; BEM 708 (October 2016), p. 1. 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, p. 16; 7 CFR 273.16(b). 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, p. 1. 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.

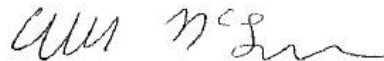
In this case, the Department requested that Respondent be subject to a 12-month disqualification period. As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV concerning FAP. Therefore, Respondent is subject to a one-year disqualification from her receipt of 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 the Department has established by clear and convincing evidence that Respondent committed an IPV.

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

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**Ellen McLemore**

Administrative Law Judge  
for Robert Gordon, Director  
Department of Health and Human Services

