



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 21, 2019  
MOAHR Docket No.: 19-005758  
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 October 3, 2019, from Detroit, Michigan. The Department was represented by Debra Echtinaw, 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 Respondent receive an OI of Family Independence Program (FIP) benefits that the Department is entitled to recoup?
3. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
4. Should Respondent be disqualified from receiving FAP and FIP 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 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 receiving program benefits.
3. Respondent was a recipient of FAP and FIP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in income/employment and residency to the Department within 10 days.
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 FIP fraud period is August 1, 2004 through September 30, 2004 (FIP fraud period).
7. The Department's OIG indicates that the time period it is considering the FAP fraud period is August 1, 2004 through September 30, 2004 (FAP fraud period).
8. During the FIP fraud period, Respondent was issued \$1,233 in FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$411 in such benefits during this time period.
9. During the FAP fraud period, Respondent was issued \$1,076 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$392 in such benefits during this time period.
10. The Department alleges that Respondent received an OI in FIP benefits in the amount of \$822 and an OI in FAP benefits in the amount of \$684.
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 Services 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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 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 \$500.00 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.

### **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. 7; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. 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 and FIP benefits because she failed to notify the Department when she secured employment, and that she was residing out of state. 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 25, 2004. 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 an employment verification from Respondent’s income from [REDACTED], in Chicago, Illinois. The document shows that Respondent began employment on June 21, 2004 and worked through November 11, 2004. The Department also presented Respondent’s IG-311 EBT History report which showed Respondent began using her FAP benefits in Illinois on June 27, 2004. Respondent’s FAP use alternated between Illinois and Michigan until July 21, 2004, when she began exclusively using her FAP benefits in Illinois until September 17, 2004.

The Department also presented notation of a call made by Respondent on July 6, 2004. The document shows that Respondent contacted the Department to report a change in group size, in that her significant other was no longer in her household. The Department highlighted that Respondent was working and utilizing her FAP benefit in Illinois at the time she reported the group change. The Department argued that Respondent had the opportunity to report the changes in her income/employment and relocation but failed to do so when speaking with the Department.

It is evident that Respondent was on notice that she was required to report changes to the Department, as she notified the Department of her change in group size. The Department presented sufficient evidence to establish that Respondent was also working and residing out of state at the time she reported the change in her group size. This indicates Respondent was intentionally withholding information regarding her employment and residency 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, for the failure to report her income, and FIP benefits, for her failure to report her income and residency. Thus, it has established that she committed an IPV in connection with her FAP and FIP 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; 7 CFR 273.16(b). Clients are disqualified for ten 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). A disqualified recipient remains a member of an active group as long as 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 FIP and FAP.

Therefore, Respondent is subject to a one-year disqualification from her receipt of FIP and FAP benefits.

### **Overissuance**

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1; 7 CFR 273.18. In this case, the Department presented Respondent's Benefit Summary Inquiry showing that she was issued \$1,233 in FIP benefits and \$1,076 in FAP benefits during the fraud period. The Department argued that Respondent was only entitled to \$411 in FIP benefits and \$392 in FAP benefits during the fraud period. The Department argued that Respondent was overissued FIP and FAP benefits solely on the basis of residency. The Department did present, nor was there any evidence presented in support of, an argument that Respondent received an overissuance of FIP and FAP benefits due to excess income. As such, the Department's contention that Respondent received an overissuance of FAP and FIP benefits due to a lack of residency is the only matter that will be addressed.

### **FAP OI**

Federal Regulations provide with respect to FAP recipient's residency requirements state 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 evidence presented by the Department clearly shows that Respondent was living in Illinois. There was not sufficient evidence provided to show Respondent was permanently living in Illinois at the time the Michigan FAP application was submitted to

the Department. The Department cited no federal requirement or regulation that prohibits out of state use of Michigan FAP benefits by a recipient.

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 (April 2018), 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 the time of the Michigan FAP application. BEM 212 also defines a temporary absence from a group as having lasted or expecting to last 30 days or less. BEM 212 (January 2017), p. 3. The Department has utilized this language under BEM 212 to establish a loss of residency, but it does not discuss residency for purposes of FAP eligibility, the policy discusses removal from a FAP group.

In order for BEM 212 to be in compliance with federal regulations, that language cannot apply to residency. A FAP recipient is free to use their FAP benefits in any state. So long as there was no misrepresentation of residency at the time of application, there can be no overissuance for failure to maintain Michigan residency or failure to inform the Department about a change in residency. Based upon the foregoing, the Department has not established that Respondent received an overissuance of FAP benefits due to her lack of residency. Therefore, the Department is not entitled to recoup/collect the FAP overissuance in the amount of \$684.

### **FIP OI**

For a client to receive FIP, they must be resident of the State of Michigan. BEM 220 (January 2016), p. 1. For FIP, a person is a resident if all of the following apply: (i) they are not receiving assistance from another state; (ii) they are living in Michigan, except for a temporary absence, and (iii) they intend to remain in the state permanently or indefinitely. BEM 220, p. 1; 42 USC 602(a)(1)(A)(i); MCL 400.32(2).

For FIP, a client must be living in Michigan with the intent to remain permanently. As stated above, it is evident Respondent was not living in Michigan. There was no evidence Respondent had any intent to return to Michigan. Therefore, Respondent was not eligible for the FIP benefits she received while residing out of state. As such, the Department properly established it is entitled to recoup/collect \$822 in overissued FIP 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 established by clear and convincing evidence that Respondent committed an IPV concerning FAP and FIP.

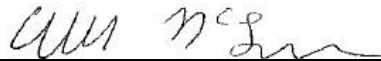
2. The Department failed to establish that Respondent received an OI of FAP program benefits in the amount of \$684 during the fraud period.
3. The Department has established an OI of FIP program benefits of \$822 during the fraud period.

The Department is ORDERED to do the following in accordance with Department policy:

1. delete the FAP OI and cease any recoupment and/or collection action; and
2. initiate recoupment and/or collection procedures for the FIP OI amount of \$822, less any amounts that have already been recouped and/or collected.

It is FURTHER ORDERED that Respondent is disqualified from FAP and FIP for a period of 12 months.

EM/cg



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**Ellen McLemore**  
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-Ottawa-70-Hearings  
OIG Hearings  
Recoupment  
MOAHR

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

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