



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]
[REDACTED]

Date Mailed: December 30, 2019
MOAHR Docket No.: 19-009070
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 December 23, 2019 from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear at the hearing. The hearing 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 60-page packet of documents was offered and admitted into evidence as Department's Exhibit A, pp. 1-60. An additional 18-page packet was offered and admitted into evidence as Exhibit B, pp. 1-18.

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 [REDACTED] 2017, Respondent submitted to the Department an application for FAP benefits. The application indicated that Respondent's household consisted of herself and [REDACTED]. The application also states that Mr. [REDACTED] is not a resident of Michigan. Exhibit A, pp. 11-24.
2. Respondent signed the application. By signing the application, Respondent certified that she 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, p. 24; Exhibit B, pp. 1-18.
3. Based on the information contained in the application, Respondent's household was approved for FAP benefits. Respondent received FAP benefits from the Department every month from August 2017 through November 2018. Exhibit A, p. 33.
4. On September 27, 2018, the Department received an email from [REDACTED] that, according to the testimony of Mr. [REDACTED], indicates that [REDACTED] received FAP benefits from the State of Florida in November and December 2017 as well as February and March 2018. Notably, the document does not identify how much was paid out, when, or why. Additionally, it contains no information about Respondent Exhibit A, p. 34.
5. The Department's OIG filed a hearing request on August 7, 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 out of state and continuing to receive and use her monthly FAP benefits from the Department. The Investigation Report indicates that the OIG "received a PARIS match (PUBLIC ASSISTANCE REPORTING INFORMATION SYSTEM) notification indicating the grantee had received SNAP benefits while residing in Florida while receiving Michigan FAP benefits." Exhibit A, pp. 1-9.
6. The Department's OIG indicates that the time period it is considering the fraud period is November 1, 2017 through March 31, 2018, during which the Department issued to Respondent \$1,408 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; 33.
7. During the entire alleged fraud period, all purchases made with Respondent's FAP benefits were made in Michigan. Exhibit A, pp. 40-43.
8. 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.

9. 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 her move out of state while continuing to 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). Additionally, an individual is prohibited from receiving duplicate assistance from more than one state. BEM 222 (October 2016), p. 1.

In this case, the Department asserted that Respondent was not eligible for Michigan-issued FAP benefits from November 1, 2017 through March 31, 2018 because she was no longer a Michigan resident and was receiving FAP benefits from the State of Florida. If the Department was able to prove either of those allegations, it would be easy to conclude that Respondent received an overissuance of FAP benefits during that time period.

However, the Department failed to show by clear and convincing evidence that Respondent was no longer a Michigan resident at any relevant time. In fact, the

evidence presented shows that Respondent likely was in Michigan during the entire alleged fraud period as all transactions FAP transactions were completed in the State of Michigan. Likewise, the Department failed to show by clear and convincing evidence that Respondent received any FAP benefits from the State of Florida. The only evidence related to that issue is an email purportedly from a person in Florida with knowledge of the FAP benefits case of Respondent's household member, Mr. [REDACTED]. The document is not authenticated and does not appear to contain government records. Even accepting the document as explained by Mr. [REDACTED] it is still not clear that it indicates receipt of FAP benefits during any time. It merely states that the person may have been eligible for benefits.

After reviewing the record, it is found that the Department failed to meet its burden of proving that Respondent received an overissuance of FAP benefits during the alleged fraud period.

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 her 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 did not report anything to the Department regarding a change in residency. However, as explained above, the Department failed to prove that there was an actual change that Respondent was required to report. Because Respondent had no duty to report, the failure to report cannot form the basis of an IPV. Thus, the Department has

failed to prove that Respondent committed an Intentional Program Violation with respect to FAP.

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.

There is no IPV with respect to FAP benefits. Therefore, Respondent is not subject to a one-year disqualification from receiving FAP benefits for a first-time IPV.

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 failed to establish by clear and convincing evidence that Respondent committed an IPV with respect to her FAP benefits.
2. Respondent is not subject to a one-year disqualification from receiving FAP benefits.
3. Respondent did not receive an overissuance of FAP benefits in the amount of 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 must delete the alleged overissuance involved in this case from Respondent's case.

JM/tm



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

DHHS

Kim Cates
1399 W. Center Road
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Petitioner

OIG
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48909-7562

Respondent

[REDACTED]

cc: IPV-Recoupment Mailbox
L. Bengel