



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED], NE [REDACTED]

Date Mailed: January 13, 2020  
MOAHR Docket No.: 19-009434  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED] [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Landis Lain

**HEARING DECISION FOR CONCURRENT BENEFITS  
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 Regulations, particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on January 9, 2020, from Lansing, Michigan. The Department was represented by Dawn O'Dell, 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).

Respondent's Exhibit A pages 1-75 were admitted as evidence.

**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 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. The Department's OIG filed a hearing request on August 19, 2019 to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of Food Assistance Program benefits issued by the Department.
4. On the Assistance Application signed by Respondent on February 14, 2018, Respondent reported that she intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in her residence to the Department.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. A review of Respondent's FAP spending shows EBT card was used in Nebraska from March 27, 2018-August 31, 2018.
8. The State of Nevada verified that Respondent received SNAP benefits from Nevada December 1, 2017-May 31, 2018.
9. The OIG indicates that the time period they are considering the fraud period is February 14, 2018-August 31, 2018.
10. During the alleged fraud period, Respondent was issued \$1254 in FAP benefits from the State of Michigan.
11. During the alleged fraud period, Respondent was issued FAP benefits from the State of Nevada.
12. This was Respondent's first alleged IPV.
13. 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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10 and MCL 400.105-.112k.

Pertinent Department policy dictates:

To be eligible for FAP or MA in the State of Michigan, a person must be a Michigan resident. Bridges uses the requirements in the Residence section in this item to determine if a person is a Michigan resident. BEM 220, page 1

For FAP:

A person is considered 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.

A homeless person is an individual who lacks a fixed and regular nighttime dwelling or who's temporary night-time dwelling is one of the following:

- Supervised private or public shelter for the homeless.

Exception: For FAP, a Respondent is considered homeless only for the first 90 days.

- Halfway house or similar facility to accommodate persons released from institutions.
- Home of another person.

Exception: For FAP, a Respondent is considered homeless only for the first 90 days.

- Place not designed or ordinarily used as a dwelling (for example, a building entrance or hallway, bus station, park, campsite, vehicle).

Exception: **For FAP, a Respondent is considered homeless only for the first 90 days. Lack of a permanent dwelling or fixed mailing address does not affect an individual's state residence status.** Assistance cannot be denied solely because the individual has no permanent dwelling or fixed address. BEM 220, page 2

For Medicaid:

A Michigan resident is an individual who is living in Michigan except for a temporary absence. Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished.

Example: Individuals who spend the winter months in a warmer climate and return to their home in the spring. They remain MI residents during the winter months.

Example: College students who attend school out of state but return home during semester breaks or for the summer can remain MI residents. (BEM 220, page 2)

Eligible persons may include:

- Persons who entered the state with a job commitment or to seek employment; and
- Students (for FAP only, this includes students living at home during a school break.) BEM 220, pages 1-2

Effective January 1, 2016, the Department's OIG requests IPV hearings for the following cases:

- 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 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, pp 12-13 (1/1/2016).

### **Intentional Program Violation**

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The Respondent intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The Respondent was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The Respondent has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 720, p 1.

An IPV requires that the Department establish by clear and convincing evidence that the Respondent 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(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.

The evidence on the record indicates that:

Respondent completed an online FAP application for MI by completing the MDHHS 1171 on February 14, 2018. Respondent's electronic signature on page 12 of the application indicates the understanding of his rights and responsibilities to the Department as well as being truthful. Respondent indicated he was homeless, no income, no assets, no disabilities and not receiving food benefits for the month.

A review of Respondent's FAP spending shows his EBT card was being used in Nebraska from March 27, 2018 through August 31, 2018.

On July 30, 2019, contact made with Sissy, from the Nebraska Health and Human Services Department at 800-386-4278, verified that Respondent's SSN was not in their data base as receiving any benefits.

A PARIS match inquiry was conducted for Respondent, resulting in receiving duplicate FAP benefits in Michigan and Nevada from February 14, 2018 through May 31, 2018.

Nevada Department of Health and Human Services Division of Welfare and Supportive Services responded to Agent's e-mail. Respondent received SNAP (FAP) benefits from Nevada December 01, 2017 through May 31, 2018. Resulting in FAP duplicate benefits from date of MI application (February 14,

2018) through May 31, 2018. Fuscarino also gave Agent a printout of Respondent's NV SNAP benefits usage, indicating all of Respondent's benefits were used that was loaded onto his SNAP card.

Respondent was not entitled to MI benefits for excessive use in a different state from June 01, 2018 through August 31, 2018 as Respondent would not have been eligible for MI FAP benefits from February 14, 2018 and would have to have reapplied for benefits.

CLEAR query shows Respondent's most recent address of 3804 Dodge St., Omaha, NE 68131. Respondent did not have residency in MI, no Driver's License, no identification card, no vehicles or utilities from MI.

The Department established by clear and convincing evidence that Respondent intentionally established residency in Nevada. Respondent did not notify the State of Michigan that he had moved and continued to use State of Michigan FAP benefits in the State of Nevada, when Respondent was not a resident of Michigan. Respondent did sign an application stating that she understood the reporting responsibilities. Respondent withheld or misrepresented information that she was a resident of the State of Michigan, while he was resident of the State of Nevada or Nebraska for the purpose of maintaining FAP benefits. Therefore, the Department has established an IPV and receipt of concurrent benefits. There is a Ten-year disqualification for concurrent receipt of benefits if fraudulent statements were made regarding identity or residency. BAM 720, page 16

### **Disqualification**

A court or hearing decision that finds a Respondent committed an IPV disqualifies that Respondent from receiving program benefits. BAM 720, p 15. A disqualified Respondent 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 17.

Respondents who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA or FAP. BAM 720, p 13. Respondents are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p 18.

### **Overissuance**

When a Respondent group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2016).

In the above captioned matter, the record evidence shows Respondent intentionally established residency in the State of Ohio from March 2016-January 2017. Respondent failed to report changes in circumstances (that she had moved to Ohio). FAP and MA benefits were issued to the Respondent from the period of February 14, 2018-August 31, 2018 in the amount of \$1254.00. Total alleged overissuance amount is \$1254.00.

**DECISION AND ORDER**

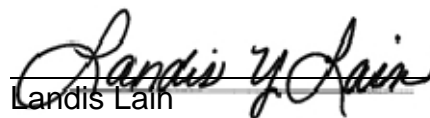
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an overissuance of Food Assistance Program benefits in the amount of \$1254.00.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$1254.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of ten years **from January 9, 2020 forward**.

LL/nr



Landis Lahn  
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

**Petitioner**

OIG- via electronic mail  
PO Box 30062  
Lansing, MI  
48909-7562

Oakland 4 County DHHS- via electronic  
mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

**DHHS**

Yaita Turner  
51111 Woodward Ave 5th Floor  
Pontiac, MI  
48342

**Respondent**

[REDACTED] - via first class mail  
[REDACTED], NE  
[REDACTED]