



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: January 23, 2020
MOAHR Docket No.: 19-011001
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 January 16, 2020 from Detroit, Michigan. The Department was represented by Mark Mandreky, 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 59-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-59.

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. Starting in January 2009, Respondent began receiving FAP benefits from the state of Mississippi. Respondent received continuous FAP benefits from Mississippi through December 31, 2010. Exhibit A, pp. 32-42.

2. On [REDACTED], 2010, Respondent submitted to the Department an application for FAP benefits. During the application process, Respondent certified to the Department that he was not receiving FAP benefits from any other state. Exhibit A, pp. 13-28.
3. Respondent signed the application. By signing the application, Respondent certified the truth of the information contained therein and that he received, reviewed, and understood the information contained within the DHHS publication titled "Things You Must Do." Exhibit A, p. 27.
4. "Things You Must Do" advised Respondent that he was required to report any changes in address or moving out of the State of Michigan within 10 days and that an intentional failure to do so violated the law and if proven, would result in criminal and/or civil penalties, including potential disqualification from the program.
5. Based on the information Respondent provided in the application, the Department approved Respondent for FAP benefits. Exhibit A, p. 29.
6. Starting May 8, 2010, Respondent exclusively redeemed his FAP benefits in Mississippi. Exhibit A, pp. 47-48.
7. Respondent never reported his move to the Department.
8. From April 1, 2010 through March 30, 2011, the Department issued Respondent FAP benefits of [REDACTED]. Exhibit A, pp. 1-9; 29.
9. Based on Respondent's pattern of exclusive use of Department-issued FAP benefits in Mississippi and his dual receipt of benefits from the Department and Mississippi, the Department investigated the matter to determine whether Respondent was eligible to receive the benefits. During the course of the investigation, the Department found that Respondent appeared to be living in Mississippi. Exhibit A, pp. 1-9; 32-42.
10. The Department's OIG filed a hearing request on October 15, 2019 to establish an overissuance of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by collecting FAP benefits from Michigan after moving out of state. Exhibit A, pp. 1-9.
11. This was Respondent's first alleged IPV.
12. The OIG requested that Respondent be disqualified from receiving FAP benefits for a period of ten years.

13. The Department's OIG indicates that the time period it is considering the fraud period is April 1, 2010 through March 30, 2011, (fraud period), during which the Department issued Respondent \$ [REDACTED] in FAP benefits. Exhibit A, pp. 1-9, 29.
14. 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), 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 misrepresentations regarding receipt of benefits from other states and failure to report his move out of state while receiving and redeeming FAP benefits from both the Department and Mississippi to amounted to an Intentional Program Violation (IPV) with respect to FAP.

Overissuance

Only residents of Michigan are eligible to receive benefits from the Department. BEM 220 (January 2010), p. 1; 7 CFR 273.18. Additionally, a client is prohibited from receiving FAP benefits from more than one state at any given time. BEM 222 (January 2010), p. 1. 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 OI. BAM 700 (March 2010), p. 1; 7 CFR 273.18.

In this case, the Department showed by clear and convincing evidence that Respondent was receiving FAP benefits from Mississippi at the time he filed his application with the Department and all the way through until at least December 31, 2010, when his Mississippi case closed. Additionally, the evidence shows that well before the concurrent benefits ended in December 2010, Respondent had already relocated to Mississippi. Thus, during the entire alleged fraud period, Respondent was ineligible due to at least one reason.

Thus, Respondent was ineligible to receive benefits from the Department from April 1, 2010 through March 30, 2011. However, because of Respondent's misrepresentation on the application and subsequent failure to report his move to Mississippi, the

Department issued for Respondent's benefit FAP benefits of \$1,740. As Respondent was ineligible to receive those benefits, they are considered an overissuance. In total, the overissuance was [REDACTED]

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 2009), 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, page 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 completely and truthfully answer all questions in forms and in interviews. BAM 105 (January 2010), p. 5. The Department clearly and correctly instructed Respondent be honest and the consequences for failing to do so. Despite that warning, Respondent dishonestly asserted on his April 2010 application to the Department that he was not receiving FAP benefits from any other state when he was actively receiving FAP benefits from Mississippi.

Respondent was required to report changes in his group's circumstances, including residency and income changes, to the Department within 10 days of the date of the change. BAM 105, pp. 7-8; 7 CFR 273.12(a)(1)-(2). The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days and to be honest. Respondent failed to report that he moved to Mississippi despite the fact that he was using his benefits there exclusively.

Respondent's dishonestly and failure to report the change to the Department must be considered an intentional misrepresentation to receive benefits he was not entitled to from Michigan since Respondent knew or should have known that he could only receive FAP benefits from the state that he resided in. Respondent sought to maximize his monthly FAP benefits by withholding from the Department the fact that he was no longer a resident who was entitled to its services. The Department has proven by clear and convincing evidence that Respondent committed an Intentional Program Violation.

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 (January 2009), p. 1.

Respondent committed an IPV with respect to his FAP benefits case by dishonestly stating that he was not receiving benefits from any other state at application and for failing to report his move to Mississippi. This does not involve a fraudulent statement or representation “regarding his identity or residence.” Rather it was a false statement about his receipt of benefits from another state followed by the absence of a required disclosure regarding residence. Thus, a ten-year disqualification is not appropriate.

As there is no evidence that Respondent has ever been found to have committed an IPV related to FAP benefits, this is Respondent’s first FAP IPV sanction. Therefore, Respondent is subject to a one-year disqualification from receiving FAP benefits.

DECISION AND ORDER

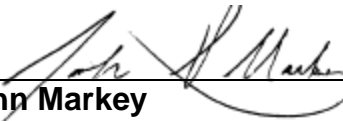
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to his FAP benefits.
2. Respondent is subject to a one-year disqualification from receiving FAP benefits.
3. Respondent received an overissuance of FAP benefits in the amount of [REDACTED] that the Department is entitled to recoup and/or collect.

IT IS ORDERED that Respondent shall be disqualified from receiving FAP benefits for a period of one year.

IT IS ORDERED that the Department may initiate recoupment and/or collection procedures for the FAP overissuance amount of [REDACTED] established in this matter less any amounts already recouped or collected.

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

Kimberly Kornoelje
121 Franklin SE
Grand Rapids, MI
49507

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

cc: IPV-Recoupment Mailbox
L. Bengel