



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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Date Mailed: January 31, 2020  
MOAHR Docket No.: 19-011060  
Agency No.: ██████████  
Petitioner: OIG  
Respondent: ██████████

**ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler**

**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 29, 2020 from ██████████ Michigan. The Department was represented by Brent Brown, Regulation Agent of the Office of Inspector General (OIG). The Respondent was self-represented.

**ISSUES**

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and Medical Assistance (MA) Program 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 benefits for FAP?

**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 October 8, 2019 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by failing to report receipt of food and medical benefits from Texas.

2. The OIG **has** requested that Respondent be disqualified from receiving FAP benefits.
3. Respondent was a recipient of FAP and MA benefits issued by the Department.
4. Respondent's son was a recipient of MA benefits issued by the Department.
5. Respondent **was** informed of the responsibility to report changes in household circumstances to the Department.
6. Respondent was also aware of the responsibility to truthfully and accurately answer all questions on forms submitted to the Department.
7. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
8. The Department's OIG indicates that the time periods it is considering the fraud period are April 2017 through May 2017 and November 2018 through March 2019 for the MA program and November 2018 through March 2019 for FAP (fraud period).
9. During the fraud period, Respondent was issued \$1,101.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
10. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,101.00.
11. The Department also alleges that it issued \$4,697.57 in MA benefits on behalf of Respondent's family, but that Respondent's family was not entitled to any of these benefits during the fraud period.
12. No evidence was presented that Respondent has previously committed an IPV; however, the Department is seeking a 10-year disqualification from FAP based upon concurrent receipt of benefits.
13. 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 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.

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 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 \$500.00 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.

BAM 720 (October 2017), pp. 5, 12-13; ASM 165 (August 2016).

### **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. 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, misrepresented information, or withheld facts or committed any act constituting a violation of Supplemental Nutritional Assistance Program (SNAP) regulations or State statutes for the **purpose** of establishing, maintaining, using, presenting, transferring, receiving, possessing, trafficking, increasing or preventing reduction of program benefits or eligibility. BAM 720, pp. 1, 12-13 (emphasis in original); 7 CFR 273.16(c) and (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.

In this case, the Department alleges that Respondent committed an IPV of FAP and MA because she received concurrent benefits in Michigan and Texas.

Federal Regulations provide with respect to FAP recipients residency requirements 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).

To support its case, the Department presented Respondent's Michigan Application for FAP benefits dated September 20, 2016 on which she acknowledges her understanding that she must report changes in household circumstances to the Department and that she has a duty to truthfully and accurately answer the questions on the Application for benefits.

Beginning on March 1, 2017, Respondent began receiving Texas-issued FAP and MA benefits. She continued to receive Texas FAP and MA benefits for herself and then also her son until February 2019. Beginning November 15, 2018, Respondent began using her Texas-issued food assistance benefits in Michigan. She continued to use her Texas-issued food assistance benefits in Michigan until March 17, 2019. On November 30, 2018, Respondent submitted an Application for FAP and MA benefits in Michigan. On the Application, Respondent indicated that she had not received any benefits from any other state within the last 30 days. Based upon the Application, Respondent received Michigan-issued FAP benefits through March 2019.

At the hearing, Respondent testified that she did not intend to commit fraud and if she marked something incorrectly on the Application, it was likely due to epilepsy and difficulties with reading. Respondent's epilepsy causes her to essentially black out, and she does not remember that she's had a seizure or the things that happened during the seizure. In addition, she has trouble with reading comprehension and did not graduate high school. As a result, she regularly asks for assistance from her husband or his family members in filling out forms, although she cannot say specifically what happened with her Application from November 2018. Respondent also testified that when she came to Michigan, she was uncertain how long she would be here and thought that it would be short-term, like a vacation; but ultimately due to family circumstances, she decided to stay. Once she decided to stay, Respondent contacted Texas and told them to stop her benefits; but this did not happen until February 2019.

Although Respondent's testimony is credible that she has epilepsy and reading comprehension issues, Respondent was still a recipient of both Texas and Michigan issued food and medical benefits for approximately four months in 2018 and 2019. In addition, Respondent testified that because of her difficulties, she always asks for help in filling out forms. If Respondent had waited to apply for Michigan benefits until she was certain that she was staying in Michigan, her story would be more credible. Instead, upon arrival in Michigan, she applied for benefits and then continued to use her Texas-issued benefits in

Michigan. As soon as Respondent started receiving benefits in both states, she needed to notify at least one of the states of the error. Respondent presented no evidence that she notified Texas or Michigan of the error in November, December, or January. Instead, the only evidence presented by Respondent was that once she decided to stay in Michigan, she notified Texas that they should close her cases.

Respondent was advised of the responsibility to truthfully and accurately answer all questions on the application for benefits. She was also advised of the responsibility to report changes in household circumstances to the Department. Respondent demonstrated her understanding of the responsibility to report changes when she called Texas when she decided to stay in Michigan. Respondent failed to report her receipt of Texas benefits to Michigan and misrepresented her circumstances on her Application. The most reasonable explanation for her failure to report receipt of Texas benefits was so that she could receive benefits from both states at the same time. Therefore, the Department has satisfied its burden of proof by clear and convincing evidence that Respondent committed an IPV.

### **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. Clients are disqualified for 10 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)(1) and (5). A disqualified recipient 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. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV. However, the Department failed to show that Respondent committed the IPV by intentionally misrepresenting her identity or residency on the application for benefits; therefore, the 10-year disqualification is not applicable. No evidence was presented of a prior IPV. Therefore, she is subject to a one-year disqualification under the FAP.

### **Overissuance**

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (October 2017), p. 6; BAM 705 (October 2018), p. 6; 7 CFR 273.18(c)(1).

In this case, the Department alleged a \$1,101.00 FAP OI for November 2018 through March 2019 based upon concurrent receipt of benefits. As discussed above, a client is not entitled to the receipt of food assistance benefits from more than one state. A review of the evidence presented shows that Respondent received food benefits from

Texas for each month of the fraud period and was issued Michigan FAP benefits in the amount of \$1,101.00 from November 2018 through March 2019. Therefore, the Department has established an OI of FAP benefits issued to Respondent during the fraud period of \$1,101.00.

The Department also alleged an MA OI totaling \$4,699.57 for the period April 2017 through May 2017 and November 2018 through March 2019. The Department initiates MA recoupment of an overissuance (OI) due to client error, not when due to agency error. BAM 710 (January 2018), p. 1. When the Department receives the amount of MA payments, it determines the OI amount. BAM 710, p. 1. For an OI due to any other reason other than unreported income or a change affecting need allowances, the OI amount is the amount of MA payments. BAM 710, p. 2.

As discussed above, Respondent failed to inform the Department about her receipt of benefits resulting in benefits from both Texas and Michigan at the same time. Department records show that the Department issued MA benefits on Respondent's behalf in April and May 2017 as well as MA benefits for herself and her son between November 2018 and March 2019. Texas records also show that Respondent received the benefit of MA from March 2017 through February 2019, and her son received Texas MA benefits from August 2018 through March 2019. The total amount of MA benefits issued by Michigan during the fraud period for both herself and her son, based upon a capitation and payment summary, is \$4,733.51. However, because the Department is limited in the amount of its recoupment to the amount requested for the hearing, the Department may only recoup or collect \$4,697.57.

### **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.
2. Respondent received an OI in FAP benefits in the amount of \$1,101.00.
3. Respondent and her son received the benefit of MA payments issued by the Department resulting in an OI totaling \$4,697.57.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$1,101.00 in FAP benefits in accordance with Department policy.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$4,697.57 in MA benefits in accordance with Department policy.

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



AMTM/jaf

**Amanda M. T. Marler**  
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

MDHHS-OIG-Hearings

DHHS

Susan Noel  
MDHHS-██████████-Hearings  
L Bengel  
Policy Recoupment

Respondent

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