



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: February 19, 2020
MOAHR Docket No.: 19-012149
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 February 13, 2020 from ██████████ Michigan. The Department was represented by Christina Herrod, 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 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 21, 2019 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV through concurrent receipt of benefits.

2. The OIG **has** requested that Respondent be disqualified from receiving program benefits for a period of ten years based upon concurrent receipt of benefits.
3. The Department presented evidence that Respondent was a recipient of FAP benefits issued by the Department from November 2017 through May 2018.
4. The Department presented evidence that Respondent received Florida issued food assistance benefits from March 2016 through November 2017 and in July 2019.
5. Respondent **was** aware of the responsibility to report changes in household circumstances to the Department within ten days of the change itself.
6. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. The Department's OIG indicates that the time period it is considering the fraud period is December 2017 through May 2018 (fraud period).
8. During the fraud period, Respondent was issued \$3,024.00 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.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$3,024.00.
10. 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.

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 the FAP because she received concurrent benefits in Michigan and Florida.

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).

The Department's evidence shows that Respondent received Florida issued food assistance benefits from March 2016 through November 2017 and again in July 2019. (Exhibit A, pp. 69-72). The Department's evidence also shows that Respondent was issued Michigan FAP benefits from November 2017 through May 2018. Therefore, the only month that overlapped or was concurrent between the two states was November 2017.

The evidence presented is unclear why Respondent stopped receiving a Florida benefit after November 2017. One reasonable explanation is that Respondent reported the start of Michigan benefits to Florida. Another reasonable explanation is that Florida discovered the Michigan benefit and stopped issuing benefits to Respondent. Another explanation is that there is simply insufficient evidence showing the continuation of a Florida benefit beyond November 2017 or an earlier start date of a Michigan benefit. Given that there are several reasonable explanations for why Respondent stopped receiving a Florida benefit after November 2017 and because the Department was

seeking to establish a fraud period from December 2017 through May 2018, not November 2017, the Department has not met 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 not satisfied its burden of showing that Respondent committed an IPV. Therefore, Respondent is not subject to a period of disqualification from 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 sought to recoup FAP benefits from Respondent for the period December 2017 through May 2018 based upon concurrent receipt of benefits in Michigan and Florida. As discussed above, the Department failed to show that Respondent received concurrent benefits between the two states during this period. Instead, the only month that the Department established concurrent receipt of benefits was in November 2017; however, the Department did not attempt to include this month in the overissuance period. Even if the Department had sought to recoup benefits for November 2017, the Department would be unable to recoup or collect for this month due to the reporting and processing rules. Policy provides that in order to beginning an overissuance period, the Department must provide the client with ten days to report the change, ten days for the Department to process the change, and an additional 12 days in order to begin a negative action. BAM 715, p. 5; BAM 105, p. 11; BAM 220 (October 2016), pp. 7-8, 12. Therefore, the earliest date that the Department could seek to recoup based upon Respondent's receipt of concurrent benefits which began on November 1, 2017 would be January 1, 2018. The Department has not established an overissuance of FAP benefits which it may recoup or collect.

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 not** established by clear and convincing evidence that Respondent committed an IPV.
2. The Department **has not** established an overissuance of FAP benefits.

The Department is ORDERED to **delete** the OI and cease any recoupment action.

It is FURTHER ORDERED that Respondent be **is not** subject to a period of disqualification from FAP.



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

Richard Latimore
MDHHS-[REDACTED]-Hearings
L Bengel
Policy Recoupment

Respondent

[REDACTED]
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[REDACTED] FL [REDACTED]