



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: March 25, 2020
MOAHR Docket No.: 19-012629
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 March 4, 2020, from Detroit, Michigan. The Department was represented by Valerie Mathis, Regulation Agent of the Office of Inspector General (OIG). Respondent was present and represented herself.

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 for ten years?

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 [REDACTED], 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 FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in his residence to the Department.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The OIG indicates that the time period they are considering the fraud period is October 1, 2017 through May 31, 2018 (fraud period).
7. During the alleged fraud period, Respondent was issued \$1,536 in FAP benefits from the State of Michigan.
8. During the alleged fraud period, Respondent was issued FAP benefits from the State of North Carolina.
9. This was Respondent's first alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was 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), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services 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:

- 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. 12-13.

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 (January 2018), p. 6; BAM 720, p. 1.

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 (emphasis in original); see also 7 CFR 273.16(e)(6). The federal regulations define an IPV as: (1) made a false or misleading statement, or

misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Supplemental Nutrition Assistance Program (SNAP), SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing for trafficking of SNAP benefits or Electronic Benefit Transfer (EBT) cards. 7 CFR 273.16(c). 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 her FAP benefits because she received Michigan-issued FAP benefits at the same time she was issued FAP benefits in North Carolina and provided false information regarding her Michigan residency. Under Department policy, a person cannot receive FAP benefits in more than one state for any month. BEM 222 (March 2016), p. 2; see also 7 CFR 273.3(a).

The Department presented applications submitted by Respondent on September 11, 2017 and October 3, 2017. The Department asserts that when completing the application process, Respondent acknowledged that she had received the Information Booklet advising her regarding "Things You Must Do," which explained reporting changes circumstances, including residency. Additionally, Respondent certified that the information in the application was complete and accurate. Respondent reported that she was homeless, but she had a mailing address at [REDACTED], in Detroit, Michigan. Respondent also indicated that she was not receiving food assistance at that time.

The Department also presented a Public Assistance Reporting Information System (PARIS) match showing Respondent was receiving food assistance in the State of Michigan at the same time she was receiving food assistance in the State of North Carolina. The Department provided documents obtained from the Department of Social Services in Mecklenburg County, North Carolina. The documents show that Respondent received food assistance in North Carolina between September 20, 2017 and July 11, 2018. Respondent submitted an application in North Carolina on [REDACTED], 2017.

The Department submitted Respondent's Michigan-issued FAP benefit usage history which shows she never utilized her FAP benefits in the State of Michigan. Respondent used her Michigan-issued FAP benefits in North Carolina between January 3, 2018 and June 16, 2018.

Additionally, the Department provided a CLEAR report showing Respondent had a multitude of addresses associated with the State of North Carolina. Respondent had one association with an address at [REDACTED], in Detroit, Michigan in February 2017. The Department also submitted a Notice of Missed Interview sent to Respondent on September 22, 2017, that was returned as undeliverable and had handwritten notes on it, stating Respondent did not live at that address.

Respondent testified that she did not submit the September 11, 2017 or the October 3, 2017 applications. Respondent has not resided in Michigan since she was a child and

has not received any Michigan-issued FAP benefits. Respondent stated that her sister, who lived on [REDACTED] in Detroit, Michigan, submitted one application on her behalf. Respondent stated she was notified by her sister that the application was denied. As a result, Respondent submitted an application in North Carolina. When asked why her sister would submit an application on her behalf, Respondent testified that her sister knew she was in a dire situation at the time and was trying to help. Respondent testified that she did not know who submitted the second application or how her FAP benefits were utilized in the State of North Carolina. Respondent reported that the address listed on both applications was her sister's address at the time.

The evidence presented establishes that for the period of October 1, 2017 through May 31, 2018, Respondent received Michigan-issued FAP benefits, and during the same period, received food assistance benefits issued by the State of North Carolina. Respondent's testimony was not credible. In order to believe Respondent's testimony, the undersigned ALJ would have to conclude that Respondent's identity was stolen. The individual that would have stolen Respondent's identity would not only have all of Respondent's identifying information, including her sister's residential location in Michigan, but also utilized the stolen FAP benefits in the same general vicinity in which Respondent lived in North Carolina. For that to occur, the individual that stole Respondent's identity would have had to obtain her FAP benefit card, which would have been mailed to her sister's address, then either use the card in North Carolina or mail the card to another individual in North Carolina. Such circumstances are highly unlikely. Thus, the Department established by clear and convincing evidence that Respondent committed an IPV of FAP benefits based on concurrent receipt of benefits.

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 ten years for a FAP IPV involving concurrent receipt of benefits where the client made fraudulent statement regarding identity or residency, 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; see also 7 CFR 273.16(b)(1) and (5). A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV through concurrent receipt food assistance benefits from two states at the same time. In order to apply the ten-year disqualification for concurrent receipt of benefits, the Department must establish that the client made fraudulent statements regarding identity or residency. BAM 720, p. 16. In this case, the Department presented numerous documents establishing that Respondent lived in North Carolina at the time both FAP applications were submitted, including an application for food assistance in the State of North Carolina submitted shortly before the Michigan FAP applications. Additionally, Respondent's Michigan-issued FAP

benefits were never utilized in Michigan, only in North Carolina. Therefore, the Department provided sufficient evidence to establish Respondent made fraudulent statements regarding her residency. Accordingly, Respondent is subject to a ten-year disqualification.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. At the hearing, the Department established that the State of Michigan issued a total of \$1,536 in FAP benefits to Respondent during the fraud period. The Department alleges that Respondent was eligible for \$0 in FAP benefits during this period.

As previously stated, the Department presented evidence from the State of North Carolina, which revealed that Respondent received food assistance benefits during the fraud period. The Department also presented the benefit issuance summary, which revealed that Respondent received Michigan-issued FAP benefits during the same months. Respondent was not eligible for FAP benefits issued by the State of Michigan during any period she was issued food assistance benefits by the State of North Carolina. BEM 222, p. 3. Therefore, the Department has established it is entitled to recoup the \$1,536 in FAP benefits it issued to Respondent during the fraud period.

DECISION AND ORDER

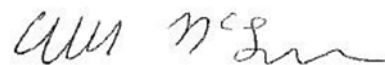
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of program FAP benefits in the amount of \$1,536.

The Department is ORDERED to initiate recoupment procedures for the amount of \$1,536 in accordance with Department policy.

It is FURTHER ORDERED that Respondent is subject to a ten-year disqualification from FAP benefits.

EM/cg



Ellen McLemore
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

Via Email:

MDHHS-Wayne-31-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

