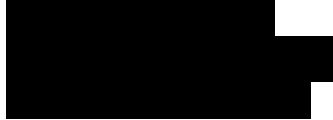




GRETCHEN WHITMER
GOVERNOR

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.: 19-013801
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION FOR
INTENTIONAL PROGRAM VIOLATION AND RECIPIENT CLAIM**

Upon the request for a hearing by the Michigan Department of Health and Human Services (MDHHS), 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 3-way telephone hearing was held on March 9, 2020, from Detroit, Michigan. MDHHS was represented by Amber Johnson, regulation agent with the Office of Inspector General. Respondent appeared and was unrepresented.

ISSUES

The first issue is whether MDHHS established a recipient claim of Food Assistance Program (FAP) benefits against Respondent.

The second issue is whether MDHHS established by clear and convincing evidence that Respondent committed an intentional program violation (IPV) which justifies imposing a disqualification against Respondent.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. From November 2017 through November 2018, Respondent received FAP benefits from the State of Tennessee.
2. From November 2017 through May 2018, Respondent received a total of \$4,072 in FAP benefits from the State of Michigan.

3. From December 14, 2017, through June 22, 2018, Respondent received employment income. Exhibit A, pp. 101-103.
4. On February 22, 2018, Respondent electronically submitted to MDHHS an application for FAP benefits. Respondent answered "No" to a question asking, "Getting Other FS Benefits?" Respondent also answered, "Yes" to a question asking if she was getting FAP benefits that month. Respondent reported no employment income. Boilerplate language stated that Respondent's signature was certification, under penalties of perjury, that all reported information was accurate. Exhibit A, pp. 17-56.
5. On March 2, 2018, Respondent electronically submitted to MDHHS an application for FAP benefits. Respondent answered "No" to questions asking, "Getting Other FS Benefits?" and "Are you getting Food Assistance this month?" Respondent reported no employment income. Boilerplate language stated that Respondent's signature was certification, under penalties of perjury, that all reported information was accurate. Exhibit A, pp. 57-94.
6. On March 6, 2018, MDHHS mailed Respondent a Notice of Case Action approving her for FAP benefits. Her FAP eligibility factored \$0 income. Exhibit A, pp. 95-98.
7. On [REDACTED], 2019, MDHHS requested a hearing to establish a recipient claim of \$4,072 in FAP benefits against Respondent. MDHHS also requested a hearing to establish a 1-year IPV disqualification against Respondent.
8. As of the date of hearing, Respondent had no previous IPV disqualifications.

CONCLUSIONS OF LAW

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. MDHHS (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-.3011. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

MDHHS requested a hearing to establish against Respondent an IPV disqualification period and a recipient claim of \$4,072 for FAP benefits. MDHHS may request hearings to establish an IPV disqualification and debt. BAM 600 (July 2019) p. 5. An unsigned Intentional Program Violation Repayment Agreement sent to Respondent alleged that Respondent received \$4,072 in duplicate FAP benefits from November 2017 through May 2018.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (January 2016), pp. 1-2. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. *Id.* Recoupment is an MDHHS action to identify and recover a benefit overissuance. *Id.* Federal regulations refer to overissuances as “recipient claims” and mandate states to collect them. 7 CFR 273.18(a).

For all programs, benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. BEM 222 (October 2016), pp. 1-3. For FAP benefits, benefit duplication is prohibited except in limited circumstances (such as a residency in a domestic violence shelter). 7 CFR 273.12(a)(2) and *Id.*

On or near December 18, 2019, MDHHS learned that Respondent could be receiving duplicate FAP benefits from the States of Michigan and Tennessee. MDHHS emailed the State of Tennessee inquiring about Respondent's FAP issuances there. Exhibit A, pp. 99-100. The State of Tennessee responded that Respondent received FAP benefits from the State of Tennessee from November 2017 through December 2018.

MDHHS presented documentation of Respondent's State of Michigan FAP issuance history. Exhibit A, p. 104. The documentation listed FAP issuances to Respondent from November 2017 through May 2018 totaling \$4,072

Respondent testified that she did not receive FAP benefits from the State of Michigan from November 2017 through May 2018. Respondent testified that any benefits issued to her during that time were based on fraudulent applications made on her behalf. Respondent's testimony suspected that the applications submitted in her name were instead submitted by an ex-boyfriend who had access to her personal information.

Respondent's claim of fraud was theoretically possible. Applications received by MDHHS on February 22, 2018, and March 2, 2018, were sent electronically. An electronic application submission would be a likely method for submitting applications when committing fraud. On the other hand, the evidence is not particularly compelling as applications sent to MDHHS electronically are not at all unusual.

Problematic for Respondent is that she provided no corroborating evidence for her claim of fraud. Respondent testified that she possessed a personal protection order against her ex-boyfriend, however, a regulation agent testified that she was told the same by Respondent. The regulation agent further testified that Respondent sent no corroborating documentation of her claim despite being asked to do so. Respondent also submitted no corroborating documentation before or during the hearing. When asked why she was unable to submit documentation, Respondent testified that she lives and works in Tennessee, while her documents are in Michigan.

The evidence supported finding that applications in Respondent's name submitted to MDHHS were submitted by Respondent. Thus, Respondent received \$4,072 in FAP benefits from the State of Michigan from November 2017 through May 2018.

The evidence established that Respondent's benefit group received \$4,072 in benefits from the State of Michigan while receiving FAP benefits from the State of Tennessee. Thus, MDHHS established a recipient claim of \$4,072 against Respondent. MDHHS further alleged that the recipient claim was caused by Respondent's IPV.

The types of recipient claims are those caused by agency error, unintentional recipient claims, and IPV. 7 CFR 273.18(b). An IPV shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards. 7 CFR 273.16(c).

An IPV requires clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an IPV. 7 CFR 273.16(e)(6). Clear and convincing evidence must be strong enough to cause a clear and firm belief that the proposition is true; it is more than proving that the proposition is probably true. M Civ JI 8.01. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

It has already been established that Respondent received an overissuance due to receipt of duplicate FAP benefits. MDHHS alleged the overissuance was caused by Respondent's purposeful concealment of receipt of FAP benefits from Tennessee.

MDHHS presented Respondent's State of Michigan application requesting FAP benefits dated March 2, 2018. Exhibit A, pp. 57-94. Respondent's application included two questions relevant to duplicate benefits: "Getting Other FS Benefits?" and "Are you getting Food Assistance this month?". Respondent answered "No" to both questions despite receiving FAP benefits from the State of Tennessee at the time. Had Respondent answered accurately, the State of Michigan would not have issued duplicate benefits. Respondent's misreporting directly led to the overissuance.

Consideration was given to whether Respondent's application from a few days earlier on February 22, 2018, offset the misreporting on her application dated March 2, 2018. On the earlier application, Respondent answered "Yes" to the question asking, "Are you getting Food Assistance this month?". Any consideration of a non-fraudulent intent is lost by Respondent's answer of "No" to the question asking, "Getting Other FS Benefits?", and her later application with multiple misreportings.

Also problematic for Respondent is that each of her applications reported having no employment income. Documentation of Respondent's work history listed employment for Respondent with Employer as of the date of each application. Respondent's multiple

failures to report employment income is not direct evidence of an IPV based on duplicate benefits, but it is highly consistent with an intent to conceal her receipt of duplicate FAP benefits.

Respondent should have been aware of the severity of misreporting information to MDHHS. Boilerplate language in MDHHS applications state that the client's signature is certification, subject to perjury, that all reported information on the document was true. The language is consistent with MDHHS policy which states that clients must completely and truthfully answer all questions on forms and in interviews (see BAM 105 (October 2016), p. 8). The evidence was not indicative that Respondent did not or could not understand the clear and correct reporting requirements.

The evidence established that Respondent misreported to MDHHS ongoing receipt of FAP benefits from Tennessee. Respondent's misreporting directly led to overissued benefits. Generally, a client's written misreporting resulting in an overissuance is clear and convincing evidence of an intent to commit an IPV; evidence was not presented to rebut the generality.

It is found MDHHS clearly and convincingly established that Respondent committed an IPV. Accordingly, MDHHS may impose a disqualification period against Respondent.

Individuals found to have committed an IPV shall be ineligible to receive FAP benefits. 7 CFR 273.16(b). The standard disqualification period is used in all instances except when a court orders a different period. IPV penalties are as follows: one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. *Id.* and BAM 725 (January 2016), p. 16.

MDHHS did not allege that Respondent previously committed an IPV. Thus, a one-year disqualification period is justified.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established a recipient claim of \$4,072 for FAP benefits overissued to Respondent from November 2017 through May 2018. It is further found that MDHHS established a basis for a one-year disqualification period against Respondent. The MDHHS requests to establish a recipient claim of \$4,072 and one-year IPV disqualification are **APPROVED**.

CG/cg



Christian Gardocki
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-49-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

