



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], MI [REDACTED]

Date Mailed: October 5, 2020
MOAHR Docket No.: 20-002116
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 September 17, 2020, from Lansing, Michigan. The Department was represented by Debra Echtenaw, 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 over issuance (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 1 year?

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 March 2, 2020, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program FAP benefits.
3. Respondent was a recipient of FAP benefits issued by the Department. Department Exhibit 1, pgs. 95-98.
4. On the Online Assistance Application, DHS-1171, submitted by Respondent on [REDACTED], Respondent reported that she understood the responsibility to report changes in household income to the Department within 10 days and reported her employment and income from [REDACTED]. She did not report her employment income to the Department from T [REDACTED] until her Redetermination Application, DHS-1010, submitted to the Department on [REDACTED]. Department Exhibit 1, pgs. 11-43 and 53-60.
5. Respondent was aware of the responsibility to report changes in household income of her increase in earned income from employment at [REDACTED] starting October 3, 2017, through March 28, 2019. Department Exhibit 1, pgs. 51-52 and 71-94.
6. Respondent had no 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 1, 2018, through February 28, 2019 (fraud period).
8. During the fraud period, Respondent was issued \$1,515.00 in benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period. Department Exhibit 1, pgs. 99-106.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,515.00.
10. This was Respondent's second alleged IPV. Department Exhibit 1, pgs. 110-112.
11. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to

August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

Effective January 1, 2016, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking overissuances 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 or more, or
 - the total amount is less than \$500, 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 (1/1/16), p. 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; BAM 720.

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, (emphasis in original); see also 7 CFR 273.16(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.

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; BEM 708. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, 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. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708. 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.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700.

In this case, Respondent was a recipient of FAP benefits issued by the Department. Department Exhibit 1, pgs. 95-98. On the Online Assistance Application, DHS 1171, submitted by Respondent on August 4, 2017, the Respondent reported that she understood the responsibility to report changes in household income to the Department within 10 days and reported her employment and income from K-mart. She did not report her employment income to the Department from Thornapple Manor until her Redetermination Application, DHS 1010, submitted to the Department on July 8, 2018. Department Exhibit 1, pgs. 11-43 and 53-60.

Respondent was aware of the responsibility to report changes in household income of her increase in earned income from employment at [REDACTED] [REDACTED] with a first paycheck received of October 23, 2014 starting October 3, 2017 through March 28,

2019. Department Exhibit 1, pgs. 51-52 and 71-94. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. The Department's OIG indicates that the time period it is considering the fraud period is December 1, 2018 through February 28, 2019 (fraud period).

During the fraud period, Respondent was issued \$1,515.00 in benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period. Department Exhibit 1, pgs. 99-106. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,515.00. This was Respondent's second alleged IPV. Department Exhibit 1, pgs. 110-112. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.

The Respondent failed to report changes in household income of her earned income from employment at [REDACTED] [REDACTED] within 10 days as required by Department policy, with a start date of October 3, 2017 through March 28, 2019. Department Exhibit 1, pgs. 51-52 and 71-94. As a result, the Respondent received an over issuance of FAP benefits of \$1,515.00 that the Department is required to recoup.

DECISION AND ORDER

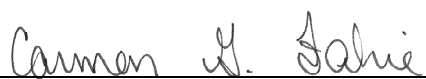
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent did commit an intentional program violation (IPV).
2. Respondent did receive an OI of program benefits in the amount of \$1,515.00 from the Food Assistance Program.

The Department is ORDERED to initiate recoupment procedures for the amount of \$1,515.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program for a period of 2 years.

CF/hb



Carmen G. Fahie
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

Barry County, DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]