



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.: 20-002133
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 22, 2020, from Lansing, Michigan. The Department was represented by Thomas Malik, Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by herself and her husband, [REDACTED]

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and Medical Assistance (MA) 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 3, 2020, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. Respondent was a recipient of FAP and MA benefits during the contested time period. Department Exhibit 1, pgs. 50-56.
3. On the Online Redetermination Application, DHS-1010, submitted by Respondent on [REDACTED], Respondent reported that she understood the responsibility to report changes in household income to the department within 10 days. Department Exhibit 1, pgs. 10-15.
4. On March 18, 2015, the Department Caseworker sent Respondent a Notice Case Action, DHS-1605, that she was a simplified reporter and required to report increases in household income over \$3,024 for a household group of 5. Department Exhibit 1, pgs. 16-21.
5. Respondent was aware of the responsibility to report increases in income above \$3,024 as a simplified reporter when her husband's income from employment at [REDACTED] exceeded the income limit for FAP. Department Exhibit 1, pgs. 22-34 and Exhibit A.
6. On [REDACTED], Respondent submitted a Semi-Annual Contract, DHS 1046 and Redetermination Application, DHS 1010, submitted on [REDACTED], that marked no change in earned income, but reported that the Respondent's husband received a commission. Department Exhibit 1, pgs. 35-42.
7. Respondent had no 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 period it is considering the fraud period is May 1, 2015, through July 31, 2015, for FAP and May 1, 2015, through June 30, 2015, for MA (fraud period).
9. During the fraud period, Respondent was issued \$1,869.00 in FAP benefits and \$1,158.23 in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$477.00 in FAP benefits and \$0.00 in MA benefits during this time period. Department Exhibit 1, pgs. 43-49.
10. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,392.00 and MA benefits in the amount of \$1,158.23.
11. This was Respondent's first alleged IPV.
12. 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 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.

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 of Health and Human Services (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 over issuances 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, ASM 165.

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 is also suspected for a client who is alleged to have trafficked FAP benefits. 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 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, the Respondent was a recipient of FAP and MA benefits during the contested time period. Department Exhibit 1, pgs. 50-56. On the Online Redetermination Application, DHS-1010, submitted by Respondent on January 29, 2015, Respondent reported that she understood the responsibility to report changes in

household income to the department within 10 days. Department Exhibit 1, pgs. 10-15. On March 18, 2015, the Department Caseworker sent Respondent a Notice Case Action, DHS-1605, that she was a simplified reporter and required to report increases in household income over \$3,024 for a household group of 5. Department Exhibit 1, pgs. 16-21.

Respondent was aware of the responsibility to report increases in income above \$3,024 as a simplified reported when her husband's income from employment at [REDACTED] exceeded the income limit for FAP. Department Exhibit 1, pgs. 22-34 and Exhibit A. On [REDACTED], Respondent submitted a Semi-Annual Contract, DHS-1046 and Redetermination Application, DHS-1010, submitted on [REDACTED], that marked no change in earned income, but reported that Respondent's husband received a commission. Department Exhibit 1, pgs. 22-42. 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 May 1, 2015, through July 31, 2015, for FAP and May 1, 2015, through June 30, 2015, for MA (fraud period). During the fraud period, Respondent was issued \$1,869.00 in FAP benefits and \$1,158.23 in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$477.00 in FAP benefits and \$0.00 in MA benefits during this time period. Department Exhibit 1, pgs. 43-49. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,392.00 and MA benefits in the amount of \$1,158.23. This was Respondent's first alleged IPV. Department Exhibit 1, pgs. 1-59 and Exhibit A.

During the hearing, the Respondent and her husband stated that they did report that he got a commission on top of his salary. Unfortunately, they did not understand that they had to report the commission income to be counted as part of his earned income, which put them over the income limits for FAP and MA. The commission income when it exceeded the simplified reporting amount was not reported to the Department as required by Department policy in 10 days. As a result, the Respondent received an OI of FAP and MA benefits that she was not entitled to, which 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, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP benefits in the amount of \$1,392.00 and MA benefits in the amount of \$1,158.23.

The Department is ORDERED to initiate recoupment/**collection** procedures for the amount of \$2,550.23 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program for a period of **12 months**.



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

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

DHHS

Wayne County (District 19), DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Respondent

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