



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], PA [REDACTED]

Date Mailed: September 29, 2020
MOAHR Docket No.: 20-002288
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

HEARING DECISION FOR CONCURRENT BENEFITS
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 Regulations, particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on September 24, 2020, from Lansing, Michigan. The Department was represented by Derrick Gentry of the Office of Inspector General (OIG). The Respondent was represented by Respondent Kelly Wilson.

Department's Exhibits pages 1-72 were admitted as evidence.

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?

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 May 13, 2020, 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, [REDACTED] applied for and received Michigan Food Assistance Program benefits for herself from September 6, 2018, through March 31, 2019, while failing to report receiving Supplemental Nutrition Assistance Benefits (SNAP) from Pennsylvania (PA). Respondent acknowledged reporting responsibilities and failed to report information to the Department of Health and Human Services (DHHS) on the DHHS Online Application signed and dated [REDACTED], 2018 (Exhibit 1). On this application Respondent claimed she was homeless, with a Michigan mailing address at [REDACTED] MI., [REDACTED] (DHHS Joy/Greenfield District).
4. The DHHS IG-180 PARIS Interstate Match revealed Respondent, [REDACTED] has an active FAP and MA case in Michigan, while also active on FAP and MA in Pennsylvania (Exhibit 2).
5. The DHHS IG-311 EBT History by recipient ID dated August 26, 2019, revealed, Respondent, [REDACTED] redeemed all her Michigan FAP benefits in the state of Pennsylvania from October 22, 2018, through March 15, 2019, with only two EBT transactions in Michigan during the same time period (Exhibits 5 and 6).
6. The BRIDGES Benefit Inquiry Summary revealed Respondent, [REDACTED] received Michigan FAP benefits from September 6, 2018 through March 21, 2019 (Exhibit 3).
7. The CLEAR Individual Report dated November 20, 20, revealed, Respondent's, [REDACTED] most recent address associated with her name is listed at [REDACTED] PA., [REDACTED], five phones # [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] has a recent utility at the same PA address with a reported date of February 28, 2018, and a service connect date of August 31, 2018. All of Respondent's prior addresses and utilities were connected in PA. Respondent has no voter registration, driver license, or real-time vehicles (Exhibit 7).
8. On December 5, 2019, the State of Pennsylvania (PA) revealed, Respondent, Kelly Wilson, received SNAP benefits in the State of PA from October 2013 through present, December 2019. Respondent's PA address listed at [REDACTED] PA., [REDACTED] and [REDACTED] PA., [REDACTED]. Also, PA confirmed the PA address listed on the Clear Report. Respondent's PA applications, payment history and spending locations are attached in this correspondence (exhibit 8 and 9).

9. Respondent's MI and PA benefits were received concurrently from September 6, 2018, through March 31, 2019.
10. As a result, a FAP over issuance (OI) in the amount of \$1,177.00 was identified for the period of September 6, 2018, through March 31, 2019, due to the concurrent receipt of benefits.
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 United States Postal Services as undeliverable.
13. Respondent conceded on the record that she received FAP benefits in two states because she was in a domestic violence situation and was running away from her ex-husband, who dragged her back to Michigan on more than one occasion.

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 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.

The OIG Agent requested the MA capitation for Respondent from October 1, 2018, to March 31, 2018, in the amount of \$1,501.37. This Administrative Law Judge finds that there is insufficient evidence on the record that Respondent used Medical Assistance benefits in two states concurrently. The Department has not established its case as to Medical Assistance benefit eligibility.

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.

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. 6; 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(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 court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720. 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.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA or FAP. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of 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.

Respondent conceded that she received FAP benefits from the state of Michigan from September 1, 2018-March 31, 2019. During this time, Respondent failed to notify DHHS that she was no longer residing in Michigan. Respondent was also in receipt of concurrent FAP benefits from Pennsylvania during that time. Respondent signed a DHS-1171 acknowledging a responsibility to accurately report information needed to determine assistance eligibility and to report household changes within ten days of occurrence. Respondent received FAP benefits concurrently in the States of Michigan and Pennsylvania.

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 for the Food Assistance Program.
2. Respondent **did** receive an OI of FAP benefits in the amount of \$1,177.00.
3. The Department did not establish by clear and convincing evidence that Respondent received Medical Assistance concurrently in the States of Michigan and Pennsylvania.

The Department is ORDERED to initiate recoupment/**collection** procedures for \$1,177.00 in accordance with Department policy.

It is **FURTHER ORDERED** that Respondent be personally disqualified from participation in the Food Assistance Program for 10 years.

LL/hb



Landis Lain
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

Wayne County (District 31), DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED]
[REDACTED], PA [REDACTED]