



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]
Date Mailed: December 14, 2020
MOAHR Docket No.: 20-005065
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

The Michigan Department of Health and Human Services (Department) requested a hearing alleging that Respondent, [REDACTED], committed an Intentional Program Violation (IPV). Pursuant to the Department's request and in accordance with MCL 400.9, 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and Mich Admin Code, R 400.3130 and R 400.3178, this matter is before the undersigned Administrative Law Judge. After due notice, a hearing was held via telephone conference on December 10, 2020. Jenna McClellan, Regulation Agent of the Office of Inspector General (OIG), represented the Department. Respondent did not appear at the hearing, and it was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4); Mich Admin Code, R 400.3130(5); or Mich Admin Code, R 400.3178(5).

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 benefits for 12 months?

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 June 30, 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 benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in group size to the Department within 10 days. Respondent was also aware of how to properly use her FAP benefits.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period for FAP benefits is March 1, 2019 through April 30, 2019 (fraud period I) and May 1, 2019 through August 18, 2019 (fraud period II).
7. During the period of March 1, 2019 through April 30, 2019, Respondent was issued \$1,010 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$384 in such benefits during this time period. The Department also alleges that it is entitled to recoup/collect FAP benefits in the amount of \$595.87 from Respondent during the period of May 1, 2019 through August 18, 2019.
8. The Department alleges that it is entitled to recoup a total of \$1,221.87 in FAP benefits from Respondent.
9. This was Respondent's first alleged IPV.
10. 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.

CONCLUSIONS OF LAW

The Department's policies are contained in the Department's Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 7 USC 2036a. It is implemented by the federal regulations contained in 7 CFR 273. The Department administers FAP pursuant to MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq.*, and Mich Admin Code, R 400.3001 to R 400.3031.

Intentional Program Violation

An IPV occurs when a recipient of Department benefits intentionally made a false or misleading statement, or misrepresented, concealed, or withheld facts. 7 CFR 273.16(c)(1). Effective October 1, 2014, the Department's OIG requests IPV hearings for cases where (1) the total repayment amount sought from Respondent for all programs combined is \$500 or more or (2) the total repayment amount sought from Respondent for all programs combined is less than \$500 but the group has a previous IPV, the matter involves concurrent receipt of assistance, the IPV involves FAP trafficking, or the alleged fraud is committed by a state government employee. BAM 720 (October 2017), pp. 12-13.

To establish an IPV, the Department must present clear and convincing evidence that the household member committed, and intended to commit, the IPV. 7 CFR 273.16(e)(6); BAM 720, p. 1. Clear and convincing evidence is evidence sufficient to result in "a firm belief or conviction as to the truth of the precise facts in issue." *Smith v Anonymous Joint Enterprise*, 487 Mich 102, 114-115; 793 NW2d 533 (2010); see also M Civ JI 8.01. Evidence may be uncontroverted and yet not be clear and convincing; conversely, evidence may be clear and convincing despite the fact that it has been contradicted. *Smith* at 115. The clear and convincing standard is "the most demanding standard applied in civil cases." *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995). For an IPV based on inaccurate reporting, Department policy also requires that the individual have been clearly and correctly instructed regarding the reporting responsibilities and have no apparent physical or mental impairment that limits the ability to understanding or fulfill these reporting responsibilities. 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 or trafficking of SNAP benefits or Electronic Benefit Transfer (EBT) cards. 7 CFR 273.16(c).

Fraud Period I

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to notify the Department that her two children were no longer living in her household. While this evidence may be sufficient to establish that Respondent may have been overissued benefits, to establish an IPV, the Department must present clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of maintaining benefits.

In support of its contention that Respondent committed an IPV, the Department presented an application for FAP benefits submitted by Respondent on [REDACTED], 2018. 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 group size. Additionally, Respondent indicated her two children were living in her household.

Additionally, the Department provided records from Respondent's children's school. The documents state that the children's emergency contact is listed as their grandmother. It also states that the children are not to be released to Respondent. The documents were signed on January 9, 2019. The Department also presented an order issued by the Third Judicial Circuit Court for the County of Wayne Family Division on January 9, 2019. The order states that Respondent's parenting time is to be supervised by the children's grandmother. The order also states that during Respondent's parenting time, the children are to sleep at their grandmother's residence.

The Department presented sufficient evidence that Respondent's children, and group members, were no longer residing with Respondent as of January 2019. Per the Eligibility Summary provided by the Department, Respondent continued to receive benefits on behalf of the children through April 2019. Respondent was aware that she was receiving FAP benefits on behalf of the children. Respondent allowed a significant time period to lapse while the children were not in her household without reporting the information to the Department. This indicates Respondent was intentionally withholding information regarding her group size to receive benefits for which she was not entitled. Therefore, the Department established by clear and convincing evidence that Respondent intentionally withheld facts for the purpose of maintaining FAP benefits, and thus, it has established that she committed an IPV in connection with her FAP case.

Fraud Period II

In this case, the Department also alleges that Respondent committed an IPV by allowing an unauthorized user to utilize her FAP benefits. An authorized representative (AR) is a person who applies for assistance on behalf of the client and/or otherwise acts on his behalf. BAM 110 (January 2017), p. 9; 7 CFR 273.2(n)(1). For FAP cases, An AR who applies on the group's behalf and is a group member may be any age. BAM 110, p. 10. If outside the group, they must be at least age 18. BAM 110, p. 10. An AR who applies on the group's behalf and/or has access to the group's FAP benefits must be designated in writing by the client, via the DHS-1171, Assistance Application, and/or DHS-247, Request for Food Stamp Authorized Representative. BAM 110, p. 10; 7 CFR 273.2(n)(1)(i). A household may allow any household member or nonmember to use its food assistance benefits to purchase food or meals, if authorized, for the household. 7 CFR 273.2(n)(3). Misuse of FAP benefits includes selling, trading or giving away FAP benefits, PIN or Michigan Bridge Card. BAM 401E (July 2018), p. 14.

In support of its contention that Respondent committed an IPV due to unauthorized use, the Department provided the application submitted by Respondent on [REDACTED], 2018. 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 that clients must not allow unauthorized individuals to use their FAP benefits.

The Department also presented case comments from Respondent's electronic case file. On October 3, 2019, a case comment was entered that stated Respondent contacted the Department on September 9, 2019. Respondent stated that she left the State of Michigan on [REDACTED], 2019 to admit herself to a rehabilitation facility called [REDACTED] in the State of Florida. Respondent informed the Department that she was living in Nebraska at that time and had been since she left the rehabilitation facility on [REDACTED], 2019. Respondent stated that she left her Electronic Benefit Transfer (EBT) card with her children's father and that he was supposed to return it to the Department.

The Department also presented a redetermination submitted by Respondent on [REDACTED], 2019. In the redetermination, Respondent indicated that she was no longer in possession of her EBT card. Respondent also reported that she was no longer living in the State of Michigan. Respondent stated that she left her EBT card with her children's father. Respondent stated that she told her children's father to expend the rest of the FAP benefits remaining on the card and then return the card to the Department.

The Department provided Respondent's IG-311 EBT history showing Respondent's FAP usage from May 1, 2019 through August 18, 2019. The document shows a multitude of transactions were completed in the State of Michigan, totaling \$595.87.

By Respondent's own statements, the Department has presented clear and convincing evidence that Respondent was no longer living in Michigan as of April 13, 2019. Respondent also admitted that she gave her FAP benefit card to an unauthorized non-group member. Respondent violated SNAP regulations by unlawfully transferring her FAP benefit to an unauthorized user. Therefore, the Department established that Respondent committed an IPV due to the unauthorized use of her FAP 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; BEM 708 (October 2016), p. 1; 7 CFR 273.16(b). 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, p. 16. 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, p. 1. 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.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is subject to a 12-month disqualification under the FAP program, as it is her first IPV related to FAP.

Overissuance

Fraud Period I

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; 7 CFR 273.18. At the hearing, the Department established that the State of Michigan issued a total of \$1,010 in FAP benefits to Respondent during the fraud period. The Department alleges that Respondent was eligible for \$384 in FAP benefits during this period.

FAP budget calculations require the consideration of the group size. The Department will determine who must be included in the FAP group prior to evaluating the non-financial and financial eligibility of everyone in the group. BEM 212 (April 2012), p. 1. The FAP group composition is established by determining all of the following: who lives together, the relationship(s) of the people who live together whether the people living together purchase and prepare food together or separately, and whether the person(s) resides in an eligible living situation. BEM 212, p. 6. Living with means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. Persons who share only an access area such as an entrance or hallway or non-living area such as a laundry room are not considered living together. BEM 212, p. 3. In general, persons who live together and purchase and prepare food together are members of the FAP group. BEM 212, p. 6.

As stated above, the Department presented sufficient evidence to establish that Respondent's children were not residing in her household during fraud period I, and therefore, should not have been included in her FAP group. The Department presented overissuance budgets showing the amount of FAP benefits Respondent received (based on a group size of three) and the amount of FAP benefits she should have received (based on a group size of one). Therefore, the Department has established it is entitled to recoup the \$626 in FAP benefits it issued to Respondent during fraud period I.

Fraud Period II

As stated above, the Department presented sufficient evidence that Respondent unlawfully transferred her FAP benefits during fraud period II. The Department highlighted all of the FAP transactions that occurred between May 1, 2019 and August 18, 2019, that were completed by another individual. The sum of these transactions is

\$595.87. Therefore, the Department established that it is entitled to recoup \$595.87 in FAP benefits from Respondent.

DECISION AND ORDER

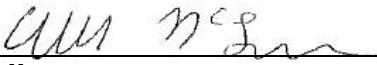
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. The Department established that it is entitled to recoup \$1,221.87 in FAP benefits from Respondent.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$1,221.87, less any amounts already recouped/collected, in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.

EM/jem


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-18-Hearings
MDHHS-OIG-Hearings
Policy-Recoupment
L. Bengel
MOAHR

Respondent - Via First-Class Mail:

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