



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 24, 2019
MAHS Docket No.: 18-010027
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 January 23, 2019, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e). During the hearing, 78 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-78.

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 benefits and if so, for how long?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED], 2016, Respondent filed with the Department an application for FAP benefits. Exhibit A, pp. 11-41.

2. Respondent further indicated on the application that she did not have any physical or mental disabilities. Exhibit A, p. 16.
3. By signing the application, Respondent certified that she received, reviewed, and understood the information contained within the DHHS publication titled "Things You Must Do." Exhibit A, pp. 23-24.
4. "Things You Must Do" advised Respondent that she was required to report any changes in address or moving out of the state of Michigan within 10 days and that an intentional failure to do so violated the law and if proven, would result in criminal and/or civil penalties, including disqualification from the program. Exhibit A, pp. 24-25.
5. Respondent's FAP application was approved, and the Department thereafter began issuing Respondent monthly FAP benefits every month through October 2017. Exhibit A, p. 75.
6. Starting March 22, 2017, Respondent's FAP benefits were used exclusively in Florida. The exclusive Florida use continued through at least November 17, 2017. Exhibit A, pp. 52-64.
7. On [REDACTED] 2017, Respondent applied for FAP benefits from the State of Florida. Florida approved Respondent's FAP application and began providing Respondent with monthly FAP benefits, starting with a partial month for the rest of April 2017. Respondent then received both Michigan and Florida issued FAP benefits each full month from May 2017 through October 2017. Exhibit A, pp. 65-74.
8. The Department's OIG filed a hearing request on September 28, 2018, to establish an overissuance of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by collecting FAP benefits from Michigan after moving out of state. Exhibit A, pp. 1-4.
9. This was Respondent's first alleged IPV. Exhibit A, pp. 77-78.
10. The OIG requested that Respondent be disqualified from receiving FAP benefits for a period of ten years.
11. The Department's OIG indicates that the time period it is considering the fraud period is April 1, 2017, through October 31, 2017 (fraud period), during which the Department issued Respondent's \$3,570 in FAP benefits. Exhibit A, pp. 1-4; 75.
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.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and 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 Department's position in this matter is that Respondent's failure to report his move out of state while continuing to receive Michigan issued FAP benefits amounted to an Intentional Program Violation (IPV) with respect to FAP.

Overissuance

Only residents of Michigan are eligible to receive benefits from the Department. BEM 220 (January 2016), p. 1. When an ineligible client is issued benefits or an eligible client is issued more benefits than the client is entitled, the Department must attempt to recoup the OI. BAM 700 (October 2016), p. 1.

In this case, the Department showed by clear and convincing evidence that Respondent was a Florida resident as of March 2017, at the latest. This conclusion is based on the facts that Respondent's EBT card was exclusively used in Florida starting March 22, 2017; Respondent submitted an application for public assistance to the State of Florida using a Florida address on April 20, 2017; and she was approved for and issued FAP benefits by the State of Florida starting in April 2017. Thus, Respondent was no longer a Michigan resident and was ineligible to receive benefits. However, because of Respondent's failure to report her move to Florida, the Department issued for Respondent's benefit FAP benefits of \$3,570 while she was no longer a Michigan resident. As Respondent was ineligible to receive those benefits, they are considered an overissuance.

Intentional Program Violation

The Department's policy in effect at the time of Respondent's alleged IPV defined an IPV as an overissuance in which the following three conditions exist: (1) the client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination; (2) the client was clearly and correctly instructed regarding his or her reporting responsibilities; and (3) the client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill his or her reporting responsibilities. BAM 720 (January 2016) 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; see also 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence which is so clear, direct, weighty, and convincing that it enables a firm belief as to the truth of the allegations sought to be established. *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (citing *In re Jobes*, 108 NJ 394 (1987)).

In this case, the Department has met its burden. Respondent was required to report changes in her circumstances to the Department within 10 days of the date of the change. BAM 105 (October 2016), pp. 11-12. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent failed to report that she moved out of state within 10 days of the date she moved. Respondent's failure to report this change to the Department must be considered an intentional misrepresentation to maintain her FAP benefits since Respondent knew or should have known that she was required to report the change to the Department and that reporting the change to the Department would have caused the Department to stop issuing her FAP benefits. Further bolstering the conclusion that this was an intentional scheme to defraud FAP is the fact that Respondent continued to regularly use her Michigan FAP benefits while also collecting Florida FAP benefits for no fewer than ten months. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her reporting requirement.

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, pp. 15-16. In general, clients are disqualified 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. A ten-year disqualification is imposed if a client makes a fraudulent statement or representation regarding residence in order to receive concurrent benefits from more than one state. BAM 720, p. 16; BEM 203 (October 2015), p. 1.

The Department's position was that this case requires the imposition of a ten-year disqualification because Respondent received concurrent benefits from both Michigan and Florida. However, Respondent did not make any fraudulent statements to the Department. Rather, Respondent intentionally failed to report that she moved out of state to the Department. As there was no fraudulent statement regarding residence or identity to the Department, a ten-year disqualification is not appropriate.

However, Respondent did commit an IPV with respect to her FAP benefits case. As there is no evidence that Respondent has ever been found to have committed an IPV related to FAP benefits, this is Respondent's first FAP IPV sanction. Therefore, Respondent is subject to a one-year disqualification from receiving FAP benefits.

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. Respondent received an overissuance of FAP benefits in the amount of \$3,570 that the Department is entitled to recoup and/or collect.
2. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to her FAP benefits.
3. Respondent is subject to a one-year disqualification from receiving FAP benefits.

IT IS ORDERED that the Department may initiate recoupment and/or collection procedures for the overissuance amount of \$3,570 established in this matter less any amounts already recouped or collected.

IT IS FURTHER ORDERED that Respondent shall be disqualified from receiving FAP benefits for a period of one year.

JM/cg



John Markey
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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Email:

MDHHS- Grand Traverse-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

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