



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], OH [REDACTED]

Date Mailed: February 21, 2020  
MOAHR Docket No.: 19-008423  
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 February 4, 2020, from Lansing, Michigan. The Department was represented by James Linaras, #134, 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 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 FAP 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 November 25, 2019, 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 FAP benefits.
3. Respondent was a recipient of FAP, and MA benefits issued by the Department. Department Exhibit 1, pgs. 79-82.
4. On the Online Assistance Application, DHS-1171, submitted by Respondent on [REDACTED], and [REDACTED], Respondent reported that she intended to stay in Michigan. Department Exhibit 1, pgs. 13-68.
5. Respondent **was** aware of the responsibility to report changes in her residence to the Department where Respondent used FAP benefits exclusively in the State of Ohio for over thirty (30) consecutive days. Department Exhibit 1, pgs. 70-73.
6. Respondent began using FAP benefits outside of the State of Michigan beginning in March 2018.
7. Respondent **did not have** an 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 for FAP is May 1, 2018, through September 30, 2018, and MA is May 1, 2018, through September 30, 2018 (fraud period).
9. During the fraud period, Respondent was issued \$960.00 in FAP benefits and \$1,205.42 in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
10. The Department alleges that Respondent received an OI of \$960.00 in FAP benefits and \$1,205.42 in MA 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 US Post Office 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), Adult Services Manual (ASM), 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.

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 benefits issued by the Department. The Department's OIG indicates that the time period it is considering the fraud period for FAP is May 1, 2018, through September 30, 2018, and MA is May 1, 2018, through September 30, 2018 (fraud period). During the fraud period, Respondent was issued \$960.00 in FAP benefits and \$1,205.42 in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period. The Department alleges that Respondent received an OI of \$960.00 in FAP benefits and \$1,205.42 in MA benefits. This was Respondent's **first** alleged IPV.

During the alleged fraud period, Respondent was issued FAP benefits from the State of Michigan. When the Respondent applied for FAP benefits in Michigan, she failed to report that she was not a resident of Michigan, but of Ohio. Respondent used all of her FAP benefits in the State of Ohio, outside the State of Michigan during the contested time period. She received her driver's license on June 18, 2018, from the State of Ohio

at [REDACTED], [REDACTED] OH [REDACTED] Respondent also began employment at [REDACTED] in Ohio on April 2, 2018. Department Exhibit 1, pgs. 74-78. Respondent failed to report her lack of residency to the State of Michigan to the Department, which resulted in her receiving an overissuance OI of \$960.00 in FAP benefits and \$1,205.42 in MA benefits that the Department is required to recoup during the contested time period. In addition, Respondent is sanctioned from receiving FAP benefits for 1 year. Department Exhibit 1, pgs. 12-88.

### **DECISION AND ORDER**

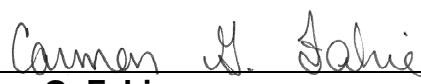
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of program benefits in the amount of \$ OI of \$960.00 in FAP benefits and \$1,205.42 in MA benefits.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$2,165.42 in accordance with Department policy.

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

CF/hb

  
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**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**

Wayne County (District 49) via electronic mail

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

**Petitioner**

OIG via electronic mail

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED] OH [REDACTED]