



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: October 11, 2019
MOAHR Docket No.: 19-008471
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 26, 2019, from Detroit, Michigan. The Department was represented by Kelvin Christian, Lead 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 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 for 10 years?

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 July 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 benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in residency to the Department.
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 alleges that Respondent received FAP benefits in Michigan and Tennessee from September 22, 2017 through February 28, 2018.
7. The Department's OIG indicates that the time period it is considering the fraud period is September 22, 2017 through February 28, 2018 (fraud period).
8. During the fraud period, Respondent was issued \$1,018.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,018.00.
10. This was Respondent's first alleged IPV.
11. A Notice of Hearing was mailed to Respondent at the last known address and was 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), 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 overissuances 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 (October 2017), pp. 12-13.

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.

7 CFR 273.16(c); BAM 700 (October 2018), p. 8; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. 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). 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.

In this case, the Department alleges that Respondent committed an IPV of his FAP benefits because he received Michigan-issued FAP benefits at the same time he was issued FAP benefits in Tennessee. Under Department policy, a person **cannot** receive FAP in more than one state for any month. BEM 222 (October 2016), p. 3. In support of its contention that Respondent committed an IPV, the Department presented an application submitted by Respondent on [REDACTED], 2017 in which he acknowledged that he received the Information Booklet advising of "Things You Must Do" (which explained reporting change circumstances, including residency).

The Department presented case comments from Respondent's assigned worker which revealed that the Department was informed from a representative from the Tennessee Department of Human Services that Respondent had relocated to Tennessee in May 2017. Another entry in the case comments indicated that Respondent informed the Department that he had been extradited to Michigan and had been recently released from prison in Michigan following a conviction for a parole violation.

The Department presented correspondence from the State of Tennessee which revealed that Respondent received FAP benefits in Tennessee from April 1, 2017 through March 31, 2018. The Department further presented a benefit issuance summary relating to Respondent's Michigan issued FAP benefits which indicated that Respondent received Michigan issued FAP benefits from September 22, 2017 through February 28, 2018.

Respondent was involuntarily returned to Michigan as a result of his extradition. The Department testified that it has not had contact with Respondent to determine if he was aware that his benefits continued in Tennessee after his incarceration and after his release. The Department testified that although it reached out to representatives in Tennessee to determine whether Respondent had been issued FAP benefits, it did not inquire as to whether Respondent used his Tennessee issued benefits or whether the benefits in Tennessee had been expunged.

To find an IPV, the Department has to show that Respondent intentionally misled the Department for the purpose of maintaining FAP program benefits. The Department has not provided any evidence the Respondent acted with the intent to defraud or mislead. The Department has merely established that Respondent was issued benefits from another state. Accordingly, it is found that the Department has not established that Respondent intentionally misled the Department for the purpose of maintaining FAP program benefits.

Disqualification

The Department contended a ten-year disqualification was justified. The contention was based solely on Respondent's receipt of FAP benefits from multiple states. A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720 (January 2016), p. 15. 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; 7 CFR 273.16(b)(1).

For a ten-year disqualification, the Department must establish that Respondent purposely misrepresented residency (or identity). The Department did not allege that Respondent misreported Michigan residency. The Department appeared to allege that Respondent only failed to report a change in state of residency. For purposes of determining the length of IPV disqualification, a failure to report a change of residency state or receipt of out-of-state FAP benefits does not equate to a fraudulent misrepresentation of residency or identity. Further, as previously stated, the Department has failed to establish that Respondent committed an IPV and thus, Respondent is not subject to any FAP disqualification.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6; 7 CFR 273.18(c)(1).

In this case, the Department alleges that Respondent committed an IPV of his FAP benefits because he received Michigan-issued FAP benefits at the same time he was issued FAP benefits in Tennessee. In this case, the Department provided evidence to show that Respondent was issued FAP benefits from both Michigan and Tennessee during the fraud period. However, the Department did not provide any evidence that Respondent actually **received** the benefits from Tennessee. The Department did not provide a transaction history from the State of Tennessee which would have shown when and where Respondent used the Tennessee issued benefits.

Further, Respondent had recently been released from incarceration at the time he applied for Michigan FAP benefits. Respondent was homeless at the time of his application. There was no evidence to show that Respondent had access to any benefits issued from Tennessee. Further, there was no evidence that Respondent reapplied for benefits in Tennessee after he was released from incarceration. Therefore, the Department has failed to establish it is entitled to recoup the \$1,018.00 in FAP benefits it issued to Respondent during the fraud period.

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 not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did not** receive an OI of program benefits in the amount of \$1,018.00 in FAP benefits.

The Department is ORDERED to delete the OI and cease any recoupment action.

It is FURTHER ORDERED that Respondent is not disqualified from receiving FAP benefits as a result of benefits issued from September 22, 2017 through February 28, 2018.

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Jacquelyn A. McClinton
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

MDHHS-Wayne-55-Hearings
OIG Hearing Decisions
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MOAHR

Respondent

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