



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: September 16, 2020
MOAHR Docket No.: 20-001366
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services (Department or Petitioner), 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 15, 2020, from Lansing, Michigan. The Department was represented by Deborah Echinaw, 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) 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 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 February 24, 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 disclose employment and income.
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 is August 1, 2018-November 30, 2018 (fraud period).
7. During the fraud period, Respondent was issued \$1,168.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,168.
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

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 January 1, 2016, 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 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, pp 12-13 (1/1/2016)(Emphasis added).

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The Respondent intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The Respondent was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The Respondent has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 700, p 7 (1/1/2016; BAM 720, p 1 (1/1/2016)).

An IPV requires that the Department establish by clear and convincing evidence that the Respondent has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720; see also 7 CFR 273. 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 Respondent who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p 2. Respondents 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 Respondents 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 (4/1/2016). 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.

This was Respondent's first instance of an IPV. Therefore, a 12-month disqualification is required.

Overissuance

When a Respondent group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2016).

Clear and convincing proof means that the **evidence** presented by a party during the trial must be highly and substantially more probable to be true than not and the trier of fact must have a firm belief or conviction in its factuality.

This Administrative Law Judge finds:

On January 31, 2020, the agent reviewed Bridges and the electronic case file (ECF) of Respondent. Respondent is listed as the grantee on the FAP case, the group composition size is five. Respondent received FAP benefits consistently from January 2014 through September 30, 2018. There is no evidence to support Respondent reported TC's increase in income from [REDACTED] to MDHHS. Respondent has no prior Intentional Program Violations (IPVs).

Respondent submitted an MDHHS-1171 Assistance Application for FAP benefits on [REDACTED], 2017, reporting [REDACTED] income from employment with [REDACTED]. Respondent reports on page N of (Exhibit 1), that TC earns \$16.50 an hour and works 40 hours a week.

On October 24, 2017, an MDHHS Notice of Case Action was sent to Respondent informing her that FAP benefits are based on reported monthly gross income of \$ [REDACTED]. This notice also informed Respondent that she is a simplified reporter and that she is required to add up their monthly gross income each month and report within 10 days when their monthly gross income goes over the income limit of \$3,118 for a household size of five. (Exhibit 2)

On December 30, 2017, an MDHHS Notice of Case Action was sent to Respondent informing her that FAP benefits are based on reported monthly gross income of \$ [REDACTED]. This notice also informed Respondent that she as a simplified reporter, she is required to add up their monthly gross income each month and report within 10 days when their monthly gross income goes over the income limit of \$3,118. Timothy Cross' income went over the monthly gross limit for December 2017. (Exhibit 3)

Respondent submitted a MDHHS 1046 Semi-Annual Contact Report dated February 8, 2018. By submitting the Semi-Annual Contact form, Respondent acknowledges that her FAP benefits are based on monthly gross earned income of \$ [REDACTED]. Respondent acknowledges that she is to report a change to their gross monthly income if it has changed by more than a \$100 over the gross monthly income of \$ [REDACTED] (Exhibit 4). The actual income for the month's prior did in fact increase by more than \$100 from \$ [REDACTED] December 2017-\$ [REDACTED] January - \$3,173, February -\$ [REDACTED] (Exhibit 6)

An MDHHS-1605 Notice of Case Action dated July 21, 2018, was sent to Respondent informing her that her FAP benefits were approved based on monthly gross earned income in the amount of \$ [REDACTED] and a simplified reporting income limit in the amount of \$3,118. (Exhibit 5)

On February 18, 2020, Respondent and TC's' wage history reports were reviewed back to 2014. The employment verification was completed on May 28, 2019, verifying TC's employment with [REDACTED], with a hire date of May 23, 2011. GL, office manager for Key Cleaning, verified the following information: TC's hire date, pay period dates and dates TC's' income increased over the income limit of \$3,118. Income records provided by GL verified that TC's income went over the income limit starting December 2017 and January 2018, then February 2018 income did not go over the income limit and starting March 2018 income went over the income limit of \$3,118. (Exhibit 6).

A review of the EBT history of FAP purchases shows that Respondent used her EBT card on March 28, 2018, during the month of March when the household income went over the monthly gross income limit of \$3,118. TC's income increased over the income limit of \$3,118 by \$1,178. (Exhibit 7)

Based on the 10/10/12 reporting requirements, Respondent would not have been eligible for any FAP benefits effective February 1, 2018, however, income was under the income limit for February 1, 2018, and according to policy (BAM 715, page 5), if income exceed the income limit again after the two month reporting requirement period and it was not reported, all months that exceed the limit after the first two months are over issued. Respondent was receiving between \$167 a month in [REDACTED] benefits, the budgeted amount of benefits allowed based on reported income of \$2,433 for a group size of five. During the time period March 1, 2018, through September 30, 2018, it was determined Respondent received an over issuance of \$1,168. (Exhibit 8 and 9)

The Department has established by the necessary competent, substantial and material evidence on the record that it was acting in compliance with Department policy when it

determined that Respondent failed to notify the Department of his earned income and when it determined that Respondent committed and Intentional Program Violation.

DECISION AND ORDER

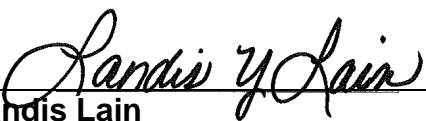
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of FAP benefits in the amount of \$1168.00.

The Department is ORDERED to initiate recoupment procedures for the amount of \$1,168.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from receiving FAP benefits for the requested twelve months from September 15, 2020, forward in accordance with Department policy.

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

Barry County, DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG via electronic mail

Respondent

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]