



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED], AR [REDACTED]

Date Mailed: September 24, 2020
MOAHR Docket No.: 20-002179
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

**HEARING DECISION FOR CONCURRENT BENEFITS
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 Regulations, particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on September 22, 2020.

The Michigan Department of health and Human Services (MDHHS) was represented by Monica Tardif, Regulation Agent with the MDHHS 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) of the FAP program?
3. Should Respondent be disqualified from receiving FAP benefits for a period of 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 March 6, 2020 to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and misrepresenting her residency.
2. The Department alleges that Respondent committed an IPV of the FAP program.
3. The OIG has requested that Respondent be disqualified from receiving program benefits.
4. Respondent was a recipient of FAP benefits issued by the Department.
5. On the Assistance Applications (DHS-1171) signed by Respondent on [REDACTED], 2018, [REDACTED], 2018, [REDACTED], 2019, and [REDACTED], 2019, Respondent reported that she was a resident of the State of Michigan. Exhibit A.1-8.
6. Respondent was aware of the responsibility to report changes in her residence to the Department by multiple mailings to Respondent following each signature by her on the DHS-1171s.
7. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
8. Respondent began using FAP benefits outside of the State of Michigan beginning on June 12, 2018.
9. The OIG indicates that there are four time periods constituting the fraud periods: June 12, 2018 to September 30, 2018; March 21, 2019 to September 30, 2019; October 2 2019 to February 29, 2020; and October 8, 2018 to February 28, 2019. Exhibit A.4.
10. During the June 12, 2018 to September 30, 2018 fraud period, Respondent received concurrent FAP benefits in the State of Arkansas, totaling \$697.00 in FAP benefits ineligibly received.
11. During the March 21, 2019 to September 30, 2019 fraud period, Respondent received FAP benefits from the State of Michigan while misrepresenting to Michigan that she resided in Michigan while residing and working in Arkansas, totaling \$1,220.00 ineligibly received.

12. During the October 2, 2019 to February 29, 2020 fraud period, Respondent received FAP benefits from the State of Michigan while misrepresenting to Michigan that she resided in Michigan while residing and working in Arkansas, totaling \$963.00 ineligibly received.
13. During the October 8, 2018 to February 28, 2019 fraud period, Respondent received FAP benefits from the State of Michigan while misrepresenting to Michigan that she resided in Michigan while residing and working in Arkansas, totaling \$916.00 ineligibly received.
14. Respondent ineligibly received a total of \$3,796.00 for all four fraud periods in FAP benefits.
15. During all four fraud periods, Respondent exclusively used her Michigan EBT card exclusively in the State of Arkansas.
16. On June 12, 2018, Respondent reported that she was a homeless resident of Michigan, and reported a Michigan mailing address while at the same time the Department discovered that Respondent had signed a lease agreement in Arkansas, was employed at a [REDACTED] in Arkansas, and exclusively used her Michigan EBT card in Arkansas. Exhibit A.8-12.
17. 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), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services 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 MDHHS policy manuals addressing IPV and over-issuances are found primarily at BAM 700, 720, 105; BEM 220 and 222. Corresponding federal regulations are found at 7 CFR 273.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs 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.

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 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. 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, clear and convincing evidence shows that the State of Arkansas verified that Respondent received Arkansas FAP benefits during the June 12, 2018 to September 30, 2018 fraud period. During this same time period, Respondent received FAP benefits from the State of Michigan on the basis that she represented that she was a resident of the State of Michigan. Respondent's receipt of FAP benefits in two states at the same time constitutes 'concurrent benefits' under federal and state law.

In addition, Respondent also represented that she was a resident of the State of Michigan for 3 additional fraud periods while having signed a lease in Arkansas, residing in Arkansas, working in Arkansas, and exclusively cashing her Michigan EBT card in Arkansas.

Under federal and state law, Respondent's receipt of concurrent benefits as well as her misrepresentation of her residency by submitting fraudulent statements regarding residency constitute IPVs triggering a 10-year disqualification period. BAM 720, p 16.

Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720. 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.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA or FAP. BAM 720, p. 13. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720.

In this case, clear and convincing evidence supports finding that Respondent's concurrent receipt of FAP benefits in two different states triggers a 10-year disqualification from the FAP program. As such, federal law requires Respondent to be disqualified for 10 years from the FAP program.

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, clear and convincing evidence supports finding that Respondent received a total of \$3,796.00 for all four fraud periods in FAP benefits for which the Department is required to recoup under federal and state law.

DECISION AND ORDER

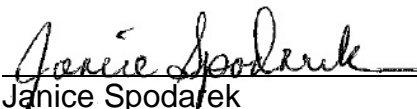
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed a FAP IPV.
2. Respondent did receive an OI of FAP benefits in the amount of \$3,796.00.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$3,796.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for 10 years.

JS/ml



Janice Spodarek
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

Denise McCoggle
Wayne (District 15) County DHHS – via
electronic mail

Recoupment – via electronic mail

L. Bengel – via electronic mail

Petitioner

OIG – via electronic mail
P.O. Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED] – via first class mail
[REDACTED]
[REDACTED] AR [REDACTED]