



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: February 1, 2021
MOAHR Docket No.: 20-004454
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, telephone hearing was held on January 07, 2021. The Department was represented by Gary Shuk, 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 the Food Assistance Program (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. On an application for assistance dated ██████████, 2016, Respondent acknowledged her duties and responsibilities including the duty to report a change of residency and changes of household income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 12-41.

2. Respondent acknowledged under penalties of perjury that her [REDACTED], 2016, application form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 38.
3. Respondent reported on her [REDACTED], 2016, application for assistance that she was living in Michigan and the father of her children was employed. Exhibit A, p 29.
4. On a Redetermination (DHS-1010) received by the Department on August 29, 2017, Respondent acknowledged her duties and responsibilities including the duty to report changes of residency and changes of household income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 42-51.
5. Respondent acknowledged under penalties of perjury that her August 29, 2017, Redetermination form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, pp 52-56.
6. Respondent reported on her August 29, 2017, Redetermination form that her children were attending school in Michigan and that the father of her children had changed employers. Exhibit A, p 49.
7. On September 9, 2017, the Department notified Respondent that she was eligible for Food Assistance Program (FAP) benefits as a household of three receiving no earned income from employment. Exhibit A, p 52-56.
8. Respondent's Food Assistance Program (FAP) benefits were used to make purchases exclusively in Michigan from March 5, 2018, through March 28, 2018. Exhibit A, p 58.
9. Respondent began using her Food Assistance Program (FAP) benefits in Kentucky on April 5, 2018 and continued to use them exclusively in Kentucky through July 17, 2018. Respondent returned to Michigan where she used her benefits to make three purchases from August 5, 2018, through August 6, 2018. Respondent then used her benefits to make purchases predominately in Kentucky from August 7, 2018, through August 20, 2018, with one purchase being made in Ohio on August 7, 2018. Exhibit A, pp 58-62.
10. Respondent failed to report that the father of her children started employment on April 5, 2018, and received earned income from April 25, 2018, through June 13, 2018, after reporting a Kentucky address to his employer. Exhibit A, pp 63-64.
11. Department records indicate that Respondent's Food Assistance Program (FAP) benefits were closed on July 27, 2018, after mail sent to her Michigan residence was returned and the department was unable to locate her. Exhibit A, p 65.
12. Respondent received Food Assistance Program (FAP) benefits totaling \$1,512 from June 1, 2018, through August 31, 2018. Exhibit A, p 57.

13. The Department's OIG filed a hearing request on June 23, 2020, to establish that Respondent committed an Intentional Program Violation (IPV). Exhibit A, p 3.
14. On June 23, 2020, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$1,512 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-9 and 63-64.
15. This was Respondent's first established IPV.
16. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Service 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), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) is funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 through 7 USC 2036a. It is implemented by the federal regulations contained in 7 CFR 273. The Department administers FAP pursuant to MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq*, and Mich Admin Code, R 400.3001 through 400.3011.

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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, or
 - the total OI 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.

Department of Health and Human Services Bridges
Administrative Manual (BAM) 720 (October 1, 2017), pp 12-13.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2018), p 1.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (July 1, 2020), p 12. The Department will act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change, except that the Department will act on a change other than a tape match within 10 days of becoming aware of the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (July 1, 2020), p 7. A pended negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p 12.

To be eligible for FAP benefits, a person must be a Michigan resident. A person is considered a resident under the FAP while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (July 1, 2020), pp 1-2. The Department is prohibited from imposing any durational residency requirements on the eligibility for FAP benefits. 7 CFR 273.3(a).

State agencies must adopt uniform standards to facilitate interoperability and portability nationwide. The term "interoperability" means the EBT system must enable benefits issued in the form of an EBT card to be redeemed in any state. 7 CFR 274.8(b)(10).

On an application, Respondent acknowledged the duty to report a change of residency and any changes of household income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

On a Redetermination form received by the Department on August 29, 2017, Respondent reported that there were five people living in her household including the father of her children. Respondent reported that her children were attending school in Michigan and that their father had changed employers. On September 9, 2017, the Department notified Respondent that she was eligible for FAP benefits as a household of three not receiving any earned income.

Respondent reported on August 29, 2017, that the father of her children had started new employment but had not received a paycheck yet. It is not clear from the hearing record whether the Department ever verified this new income source. On September

9, 2017, the Department notified Respondent that she was eligible for FAP benefits as a household of three not receiving any income. The father of Respondent's children is not listed as a household member on the September 9, 2017, Notice of Case Action.

The Department alleges that Respondent was no longer a Michigan resident but established residency in Kentucky. The Department supports this allegation by showing that Respondent's FAP benefits were used to make purchases exclusively in Kentucky from April 5, 2018, through July 17, 2018. The Department also supports its determination by showing that the father of Respondent's children had reported a Kentucky address to his employer on April 5, 2018, the same day Respondent began using her FAP benefits in Kentucky.

However, the fact that the father of Respondent's children was employed in Kentucky does not prove that Respondent was not living in Michigan. The father of Respondent's children was not part of the FAP benefit group as of September 9, 2017, and there is no evidence that he was added to the group after that. Respondent received a \$504 monthly allotment of FAP benefits from March 1, 2018, through August 31, 2018, which is the maximum allotment of FAP benefits that a household of three can receive. Department of Health and Human Services Reference Table Manual (RFT) 260 (October 1, 2017), p 1.

In the absence of any alternate explanation, it is reasonable to assume that Respondent was in Kentucky when her FAP benefits were being used exclusively in Kentucky to make purchases.

However, this is not clear and convincing evidence that she intended to remain living in Kentucky and did not consider herself to be living in Michigan. Respondent was entitled to use her FAP benefits in Kentucky during a temporary absence from Michigan. The Department does not have the authority to place a durational limit on the amount of time she can spend outside Michigan on a temporary visit.


This Administrative Law Judge finds that the Department has failed to offer clear and convincing evidence that Respondent established residency in Kentucky, or that she was not temporarily absent from Michigan while her FAP benefits were being used to make purchases in Kentucky. The Department has failed to establish that Respondent was not eligible for any FAP benefits from June 1, 2018, through August 31, 2018, and has failed to establish an Intentional Program Violation (IPV).

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

KS/nr



Kevin Scully
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

Lori Aumick
4809 Clio Road
Flint, MI
48504

Genesee Clio County DHHS- via
electronic mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

Petitioner

OIG- via electronic mail
PO Box 30062
Lansing, MI
48909-7562

Respondent

██████████ - via first class mail
██████████
██████████ MI
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