



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: September 20, 2017
MAHS Docket No.: 17-004384
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 August 30, 2017, from [REDACTED] Michigan.

The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). [REDACTED] testified on behalf of the Department. The Department submitted 119 exhibits which were admitted into evidence.

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). The record was closed at the conclusion of the hearing.

ISSUES

1. Did Respondent receive an overissuance 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 FAP benefits for two years?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on March 20, 2017, to establish an overissuance of benefits received by Respondent as a result of Respondent having failed to report her earned income and, as such, allegedly committed an IPV. [Dept. Exh. 1].
2. The OIG has requested that Respondent be disqualified for two years from receiving program benefits. [Dept. Exh. 119].
3. Respondent was a recipient of FAP benefits issued by the Department. [Dept. Exh. 96-118].
4. On the Assistance Application signed by Respondent on September 17, 2014, Respondent reported that she was employed with [REDACTED]. [Dept. Exh. 14-30].
5. On December 2, 2014, Respondent completed a State Emergency Relief application and reported her only income as Child Support. [Dept. Exh. 31-50].
6. On January 25, 2015, Respondent submitted her Semi-Annual Contact Report to the Department reporting she had been laid off from [REDACTED]. [Dept. Exh. 51-52].
7. On July 1, 2015, Respondent submitted an online Change Report indicating her return to work with [REDACTED] with a start date of June 29, 2015. [Dept. Exh. 54-56].
8. On November 16, 2015, Respondent completed an online assistance application reporting her employment with [REDACTED]. [Dept. Exh. 57-70].
9. On February 1, 2016, the Department received a Verification of Employment from [REDACTED] indicating she was employed as a bartender from September 11, 2014, with a last paycheck of December 26, 2014. [Dept. Exh. 71-74].
10. On February 10, 2016, the Department received a Verification of Employment from [REDACTED] indicating she was employed as a secretary beginning April 27, 2015, and was laid off on November 13, 2015. [Dept. Exh. 75-76].
11. On February 19, 2016, the Department received a Verification of Employment from [REDACTED] indicating that Respondent was employed as a waitress since July 24, 2015, and was still employed. [Dept. Exh. 77-88].

12. Respondent was aware of the responsibility to report changes in her employment to the Department. [Dept. Exh. 14-30; 31-50; 51-52; 54-56; 57-70].
13. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. [Dept. Exh. 14-30; 31-50; 51-52; 54-56; 57-70].
14. Respondent did not appear and give evidence at hearing to rebut the evidence presented by Petitioner in the Hearing Summary with attachments.
15. The OIG indicates that the time period they are considering the fraud period is September 1, 2014, through February 29, 2016. [Dept. Exh. 1, 4-5, 98-118].
16. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP benefits from the State of Michigan and was not entitled to FAP benefits on her unreported income, resulting in a \$ [REDACTED] overissuance. [Dept. Exh. 1, 4-5, 98-118].
17. This was Respondent's second alleged IPV. [Dept. Exh. 119].
18. 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 January 1, 2016, 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 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).

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 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(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 record evidence clearly shows that Respondent was employed as a secretary, bartender and waitress between September 11, 2014 and as of February 19, 2016, without notifying the Department. The Department established by clear and convincing evidence that Respondent intentionally withheld and misrepresented information that she was not working for the purpose of maintaining Food Assistance Program benefits. Therefore, the Department has established an Intentional Program Violation.

Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720, p 15. 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, p 17.

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, p 18.

Respondent's signature on the Assistance Applications, State Emergency Relief application, Semi-Annual Contact Report, and Change Report, certifies that she was aware that fraudulent participation in FAP could result in criminal or civil or administrative claims. This Administrative Law Judge therefore concludes that the Department has shown, by clear and convincing evidence, that Respondent committed a second intentional violation of the FAP program, resulting in a two-year disqualification.

Overissuance

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

In the above captioned matter, the record evidence shows Respondent intentionally failed to report her earned income to the Department. This resulted in an overissuance of \$ [REDACTED] for the fraud period of September 1, 2014, through February 29, 2016, which the Department is entitled to recoup.

DECISION AND ORDER

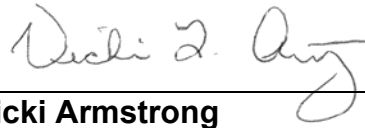
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an overissuance of Food Assistance Program benefits in the amount of \$ [REDACTED]

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the Food Assistance Program for two years.

VLA/md



Vicki Armstrong
Administrative Law Judge
for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]