



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: June 4, 2018
MAHS Docket No.: 17-016657
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

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 Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on May 31, 2018, from Lansing, Michigan. The Department was represented by Christopher Tetloff, Regulation Agent of the Office of Inspector General (OIG). The Respondent did not appear. The hearing was held in the Respondent's absence pursuant to 7 CFR 273.16(e).

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 FAP benefits?

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 December 11, 2008, Respondent applied for assistance, including FAP benefits.
2. In the application Respondent submitted on December 11, 2008, the Department asked Respondent to list all persons living in her household and Respondent only listed herself and her two minor children as living in her household.

3. In the application Respondent submitted on December 11, 2008, Respondent listed her ex-husband as her authorized representative so that he could also have access to her FAP benefits.
4. When Respondent signed her December 11, 2008, application for assistance, she acknowledged that she had received and reviewed an information booklet (which contained her rights and responsibilities).
5. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her reporting requirement.
6. The Department approved Respondent for FAP benefits and paid Respondent FAP benefits based on the information she provided in her application.
7. On December 14, 2010, the Department sent a Redetermination to Respondent to obtain information to review her eligibility for FAP benefits; the Department listed Respondent and the name of one minor child as people living in her household and instructed Respondent to add the names of any others living with her.
8. On January 3, 2011, Respondent completed the Department's Redetermination and only listed herself and one minor child as living in her household; Respondent did not add the names of any others living with her.
9. The Department approved Respondent for FAP benefits and paid Respondent FAP benefits based on the information she provided in response to the Redetermination.
10. On December 13, 2011, the Department sent a Redetermination to Respondent to obtain information to review her eligibility for FAP benefits; the Department listed Respondent and the name of one minor child as people living in her household and instructed Respondent to add the names of any others living with her.
11. On December 20, 2011, Respondent completed the Department's Redetermination and only listed herself and one minor child as living in her household; Respondent did not add the names of any others living with her.
12. The Department approved Respondent for FAP benefits and paid Respondent FAP benefits based on the information she provided in response to the Redetermination.
13. The Department conducted an investigation of Respondent's income and determined that Respondent failed to report that her ex-husband was living in her household and had income.
14. The Department found that Respondent's ex-husband was an authorized representative on Respondent's case, he used the same address as Respondent,

he shared bank accounts with Respondent, and he had been earning employment income from Chrysler while Respondent had been claiming FAP benefits.

15. The Department determined that Respondent was issued \$ [REDACTED] in FAP benefits from February of 2011 through September of 2012, but she was not entitled to receive any FAP benefits because she had unreported income.
16. On November 28, 2017, the Department's OIG filed a hearing request to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
17. A notice of hearing was mailed to Respondent at her last known address and it was not returned by the United States Postal Services as undeliverable.
18. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first IPV.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), 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.

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 (August 1, 2012), p. 1.

The Department's OIG requests IPV hearings for the following cases:

- 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 OI amount for the FIP, SDA, CDC, MA and FAP programs combined is \$1,000.00 or more, or
 - the total amount is less than \$1,000.00, 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, p. 10

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; see also 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence which is so clear, direct, weighty, and convincing that it enables a firm belief as to the truth of the allegations sought to be established. *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (citing *In re Jobes*, 108 NJ 394 (1987)).

In this case, I find that the Department has met its burden. Respondent was required to report changes in her circumstances to the Department within 10 days of the date of the change. BAM 105 (April 1, 2015), p. 7. The Department established that Respondent was clearly and correctly instructed to report changes to the Department. The Department established that Respondent failed to report to the Department that her ex-husband was living in her household while she was claiming FAP benefits. Respondent's failure to report to the Department that her ex-husband was living in her household while she was claiming FAP benefits must be considered an intentional misrepresentation to maintain her FAP benefits since Respondent knew or should have known that she was required to report that her ex-husband was living with her and that reporting that he was living with her would have caused a reduction in her FAP benefits. Respondent's intentional misrepresentation was ongoing from the date she applied for FAP benefits on December 11, 2008, through the month she last received FAP benefits, September of 2012. The Department established that Respondent did not have any

apparent physical or mental impairment that would limit her understanding or ability to fulfill her reporting requirement.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15-16. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, 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. 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.

In this case, there is no evidence that Respondent has ever been found to have committed an IPV related to FAP benefits. Thus, this is Respondent's first IPV related to FAP benefits. Therefore, Respondent is subject to a one-year disqualification.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700 (December 1, 2011), p. 1. In this case, the Department established that Respondent received more FAP benefits than she was entitled to receive. The Department issued Respondent \$ [REDACTED] in FAP benefits when Respondent was not entitled to any FAP benefits. Thus, Respondent received an overissuance of \$ [REDACTED]

DECISION AND ORDER

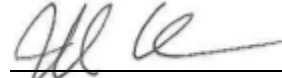
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

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

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent shall be disqualified from FAP benefits for a period of 12 months.

JK/nr



Jeffrey Kemm
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) 763-0155; 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

Ashur Hillman
220 Fort St.
Port Huron, MI
48060

St. Clair County DHHS- via electronic mail

M. Shumaker- via electronic mail

MDHHS- Recoupment- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

