



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: June 5, 2018
MAHS Docket No.: 17-016719
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [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 June 5, 2018, from Lansing, Michigan. The Department was represented by Martin O'Sullivan, Regulation Agent of the Office of Inspector General (OIG). The Respondent appeared and represented herself.

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from receiving Food Assistance Program (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 June 24, 2015, Respondent signed an order of probation in case [REDACTED] of the [REDACTED] Circuit Court; the [REDACTED] Circuit Court ordered Respondent to serve a one-year term of probation.
2. On September 14, 2015, Respondent completed an online application for assistance, including FAP benefits.
3. In the application Respondent completed, the Department asked Respondent "Probation or parole?" in the section on "Questions about the people in your home."

4. Respondent answered "No" to the question about probation or parole.
5. Respondent acknowledged that she had received and reviewed the "information booklet explaining how to apply for and receive help: Things You Must Do, Important Things to Know, Information About Your Household That Will Be Shared."
6. Respondent certified that she read and understood her rights and responsibilities.
7. On December 17, 2015, the [REDACTED] Circuit Court issued a bench warrant for Respondent's arrest for a probation violation in case [REDACTED] after Respondent failed to appear for a show cause hearing on December 15, 2015.
8. On April 18, 2016, Respondent completed an online application for assistance.
9. In the application Respondent completed, the Department asked Respondent "Probation or parole?" in the section on "Questions about the people in your home."
10. Respondent answered "No" to the question about probation or parole.
11. Respondent acknowledged that she had received and reviewed the "information booklet explaining how to apply for and receive help: Things You Must Do, Important Things to Know, Information About Your Household That Will Be Shared."
12. Respondent certified that she read and understood her rights and responsibilities.
13. The application instructed Respondent to report changes within 10 days of the date of the change.
14. Respondent did not report to the Department that she was in violation of the terms of her probation.
15. Respondent was unaware that a bench warrant had been issued for her arrest until law enforcement advised her of the warrant sometime in 2016.
16. Respondent did not have any apparent physical or mental impairment which would limit her understanding or ability to fulfill her reporting requirement.
17. On December 15, 2017, the Department's OIG filed a hearing request to establish an IPV.
18. The Department's OIG requested that 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.

The Department's policy in effect at the time of Respondent's alleged IPV defined an IPV as an overissuance in which the following three conditions exist: (1) The client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and (2) The client was clearly and correctly instructed regarding his or her reporting responsibilities, and (3) The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities. BAM 720 (October 1, 2015) 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; 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, the Department has not met its burden. The Department did not present sufficient evidence to establish by clear and convincing evidence that Respondent committed an IPV. Specifically, the Department did not present sufficient evidence to establish (1) that the Department clearly and correctly instructed Respondent regarding her reporting responsibilities with respect to probation violations and (2) that Respondent intentionally withheld information about her probation violation for the purpose of obtaining or maintaining her FAP benefits.

The Department did not provide sufficient evidence to establish that it clearly and correctly instructed Respondent that she was responsible for reporting probation violations to the Department. The only evidence the Department presented that mentioned probation was a vague and incomplete question in the application Respondent completed which stated, "Probation or parole?" Since the question was vague and incomplete, a reasonable person would not have known what it was asking for. The question did not instruct Respondent to report probation violations to the

Department and it did not put Respondent on notice that having a probation violation would cause her to be disqualified from receiving benefits.

The Department also did not provide sufficient evidence to establish that Respondent intentionally withheld information about her probation violation for the purpose of obtaining or maintaining her FAP benefits. The Department established that Respondent knew or should have known that she was in violation of the terms of her probation, but the Department did not establish that Respondent knew she was required to report this information to the Department. If Respondent did not know that she was required to report her probation violation to the Department, her failure to report it in and of itself cannot establish that she intended to withhold information to obtain or maintain her FAP benefits. The Department did not present any other evidence to establish that Respondent intentionally withheld information about her probation violation from the Department for the purpose of obtaining or maintaining her FAP benefits.

For these reasons, the Department has not established that Respondent committed an IPV. Therefore, Respondent is not disqualified from receiving FAP benefits for an 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.

IT IS ORDERED THAT Respondent shall not be disqualified from receiving FAP benefits.

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

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Washtenaw County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

DHHS

Raina Nichols
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Respondent

