



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: June 15, 2018
MAHS Docket No.: 17-016895
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 Titles 7 and 42 of the Code of Federal Regulations (CFR), particularly 7 CFR 273.16 and 42 CFR 431.230(b), and with Mich Admin Code, R 400.3130. After due notice, a telephone hearing was held on June 13, 2018, from Lansing, Michigan. The Department was represented by Debra Echtinaw, Regulation Agent of the Office of Inspector General (OIG). The Respondent did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4) and Mich Admin Code R 400.3130(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of Family Independence Program (FIP) and 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 FIP and 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. In 2009, Respondent was found to have committed an IPV.
2. In 2013, Respondent was found to have committed her second IPV related to FAP benefits.

3. On May 10, 2016, Respondent applied for assistance from the Department, including FIP and FAP.
4. In the application Respondent completed on May 10, 2016, Respondent reported that her address was [REDACTED] in [REDACTED] [REDACTED] and she reported that she had only one person in her household in addition to herself, her son, [REDACTED] [REDACTED]
5. In the application Respondent completed on May 10, 2016, the Department instructed Respondent to report all changes which could affect her eligibility for benefits to the Department within 10 days of the date of the change.
6. Respondent did not have any apparent physical or mental impairment which would have limited her understanding or ability to fulfill her responsibilities to the Department.
7. On August 6, 2016, Respondent's child, [REDACTED] [REDACTED] began working at Mr. [REDACTED] in Flint; [REDACTED] [REDACTED] remained employed at Mr. [REDACTED] through November 26, 2016.
8. In September 2016, the Department issued \$ [REDACTED] in FIP and \$ [REDACTED] in FAP benefits to Respondent based on a group size of 2 (Respondent and [REDACTED] [REDACTED])
9. On September 16, 2016, Respondent submitted a response to a request for information from the Department regarding her eligibility for FAP benefits.
10. In the response Respondent submitted on September 16, 2016, Respondent reported that her daughter, [REDACTED] [REDACTED] moved out of her household on September 5, 2016; Respondent did not report that [REDACTED] [REDACTED] was living in Flint.
11. On September 26, 2016, Respondent's child, [REDACTED] [REDACTED] began working at Revolution Field and reported his address to his employer as [REDACTED] in [REDACTED] [REDACTED] [REDACTED] remained employed by Revolution Field through November 8, 2016.
12. In October 2016, the Department issued \$ [REDACTED] in FIP and \$ [REDACTED] in FAP benefits to Respondent based on a group size of 3 (Respondent, [REDACTED] [REDACTED] and [REDACTED] [REDACTED])
13. In November 2016, the Department issued \$ [REDACTED] in FIP and \$ [REDACTED] in FAP benefits to Respondent based on a group size of 3 (Respondent, [REDACTED] [REDACTED] and [REDACTED] [REDACTED])
14. From September 2016 through November 2016, Respondent was living in Grand Rapids.

15. Respondent did not report to the Department that [REDACTED] [REDACTED] was living in Flint.
16. On December 21, 2017, the Department's OIG filed a hearing request to establish that Respondent received an OI of benefits and that Respondent committed an IPV.
17. The OIG requested Respondent be disqualified from receiving FIP and FAP program benefits for her lifetime for a third IPV.
18. A notice of hearing was mailed to Respondent at her 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), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700 (January 1, 2016), p. 1. In this case, Respondent received more benefits than she was entitled to receive. In September 2016, the Department issued FIP and FAP benefits to Respondent based on a group size of 2 when it should have only issued benefits based on a group size of 1 because [REDACTED] [REDACTED] was included as a member of Respondent's group when he should not have been because he was living in Flint. In October and November 2016, the Department issued FIP and FAP benefits to Respondent based on a group size of 3 because [REDACTED] [REDACTED] and [REDACTED] [REDACTED] were included as members of Respondent's group when neither of them should have been included because they were living in Flint. Since the Department issued benefits to Respondent based on too many group members, the Department issued more benefits to Respondent than what she was actually eligible for. Thus, Respondent received more benefits than she was

entitled to receive. The Department overissued \$ [REDACTED] in FIP and \$ [REDACTED] in FAP benefits for September 2016 through November 2016.

Intentional Program Violation

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 (January 1, 2016) 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, 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, 2016), p. 11-12. The Department clearly and correctly instructed Respondent to report changes to the Department. Respondent failed to report that a group member left her household in September 2016 when [REDACTED] [REDACTED] began working and living in Flint. Respondent's failure to report this change to the Department must be considered an intentional misrepresentation to maintain her benefits since Respondent knew or should have known that she was required to report the change to the Department and that reporting the change to the Department would have caused a reduction in her FIP and FAP benefits. 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. In general, clients are disqualified 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 prior IPV disqualification from a program is not counted later when determining the disqualification period for an IPV in a different program. BAM 720, p. 20. 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, the Department did not present any evidence to establish that Respondent had a prior IPV related to FIP benefits. Although the Department established that Respondent had two prior IPV's, the Department did not establish that either of those IPV's were related to FIP benefits. A prior IPV cannot be considered unless it was for the same program. Since the Department did not present sufficient evidence to establish that Respondent had a prior IPV related to FIP benefits, I cannot consider a prior IPV in determining her disqualification period for FIP benefits. Thus, I must find that this is Respondent's first IPV related to FIP benefits. Therefore, Respondent is subject to a one-year disqualification.

In this case, the Department presented sufficient evidence to establish that Respondent had two prior IPV's related to FAP benefits. Thus, this is Respondent's third IPV related to FAP benefits. Therefore, Respondent is subject to a lifetime disqualification from FAP benefits.

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:

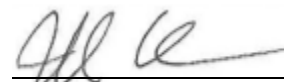
1. Respondent received an overissuance of \$ [REDACTED] in FIP and \$ [REDACTED] in FAP benefits that the Department is entitled to recoup.
2. The Department has established, by clear and convincing evidence, that Respondent committed an IPV related to her FIP and FAP benefits.
3. Respondent should be disqualified from receiving benefits.

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

IT IS FURTHER ORDERED that Respondent shall be disqualified from FIP benefits for one year.

IT IS FURTHER ORDERED that Respondent shall be disqualified from FAP benefits for her lifetime.

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

Lindsay Miller
125 E. Union St 7th Floor
Flint, MI
48502

Genesee Union St. County DHHS- via
electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

