



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: June 12, 2018
MAHS Docket No.: 17-016919
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 June 12, 2018, from Lansing, Michigan. The Department was represented by Rick Rafferty, 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).

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 January 14, 2014, the Department mailed a Redetermination to Respondent to gather information from Respondent to review her eligibility for FAP benefits.
2. On January 22, 2014, Respondent provided the information requested in the Redetermination and returned it to the Department.

3. The Redetermination instructed Respondent to list all household income, and Respondent did not list any.
4. At the time that Respondent completed the Redetermination, Respondent shared a bank account with her boyfriend, [REDACTED] and the bank account had periodic deposits.
5. 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.
6. The Department found Respondent eligible for FAP benefits based on the information that she provided in her January 22, 2014, response.
7. The Department excluded Respondent's boyfriend, [REDACTED] as a group member.
8. The Department issued Respondent \$ [REDACTED] in FAP benefits from January 2014 through August 2014.
9. In 2014, Respondent received \$ [REDACTED] from [REDACTED].
10. In 2016, the Department initiated an investigation of Respondent's case and discovered that Respondent had unexplained deposits in a bank account she shared with her boyfriend, [REDACTED].
11. The Department determined that Respondent had unreported income in an amount equal to the unexplained deposits.
12. The Department determined that it overissued \$ [REDACTED] in FAP benefits to Respondent from January 2014 through August 2014.
13. On March 9, 2018, the Department's OIG filed a hearing request to establish that Respondent received an OI of benefits and that Respondent committed an IPV.
14. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first IPV.
15. 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), 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.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700 (July 1, 2013), p. 1. In this case, the Department did not establish that Respondent received an overissuance. The Department argued that Respondent received an overissuance because Respondent had unreported income since she shared a bank account with her boyfriend, [REDACTED] and it had funds deposited into it which were available to Respondent but unreported. I am not persuaded by the Department's argument. Although funds were deposited into the bank account Respondent shared with her boyfriend, the Department did not present sufficient evidence to establish that any portion of those funds should be considered Respondent's countable income.

If income is received jointly, then an equal share of it is attributable to each individual who received it unless there is evidence that it should be attributed otherwise. BEM 500 (January 1, 2014), p. 7. "Income is received jointly if the payment is made in the name of more than one individual" BEM 500, p. 7. Thus, whether a payment is received jointly depends solely on whether it was issued in the name of more than one individual. The Department did not present any evidence to establish what name(s) the deposited payments were issued to. The Department did not present any check stubs with Respondent's name or any other evidence to show that the payments were issued jointly to Respondent. Thus, there is insufficient evidence to determine whether the payments were actually received jointly. Since there is insufficient evidence to establish that the payments were received jointly, a share of the payments cannot be attributed to Respondent and considered Respondent's countable income.

The Department did not present sufficient evidence to establish that any of the deposited payments were Respondent's rather than her boyfriend's, so they cannot be considered Respondent's countable income. Any payments Respondent's boyfriend received (that were not received jointly) cannot be considered Respondent's income because the Department excluded him from Respondent's group. Income of non-group members is not considered when determining eligibility. BEM 212 (October 1, 2013),

p. 9. Since Respondent's boyfriend was a non-group member, his income could not be considered by the Department in considering Respondent's eligibility.

The Department did not present sufficient evidence to establish that Respondent had any other income either. The Department argued that Respondent had her own business and that she had income from it, but the Department did not present sufficient evidence to establish Respondent actually had self-employment income during the time period involved. The only evidence of self-employment income the Department presented was a 2014 1099 form which showed Respondent received \$ [REDACTED] sometime during the year 2014. The 1099 form did not establish when during the year Respondent received the funds and it did not establish that Respondent received \$ [REDACTED] in self-employment income because it did not take into account the expenses incurred in generating the payment.

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 (July 1, 2013) p. 1. In this case, an IPV cannot be established since an IPV cannot exist without an overissuance and an overissuance has not been established.

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. Since an IPV had not been established, Respondent is not disqualified.

DECISION AND ORDER

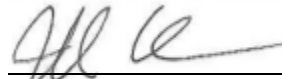
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent did not receive an overissuance of FAP benefits that the Department is entitled to recoup.
2. The Department has not established, by clear and convincing evidence, that Respondent committed an IPV.

3. Respondent should not be disqualified from receiving FAP benefits.

IT IS ORDERED THAT Respondent shall not be disqualified from 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

DHHS

Liz Hincka
164 North 4th Street
Rogers City, MI
49779

Presque Isle 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

