



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: June 14, 2018
MAHS Docket No.: 17-016964
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 13, 2018, from Lansing, Michigan. The Department was represented by Julie Price, 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 September 19, 2013, Respondent obtained a quit claim deed for a parcel of real property commonly known as [REDACTED] in Flint for \$ [REDACTED] pursuant to the terms of a land contract that had been fulfilled.
2. On September 25, 2013, Respondent's deed for the parcel of real property commonly known as [REDACTED] in Flint was recorded.

3. On November 1, 2013, Respondent applied for assistance from the Department, including FAP benefits.
4. In the application Respondent submitted on November 1, 2013, Respondent listed her address as [REDACTED] in Flint and claimed her rent was \$ [REDACTED] per month.
5. In the application Respondent submitted on November 1, 2013, the Department asked Respondent if she had any real property and Respondent indicated that she did not have any.
6. In the application Respondent submitted on November 1, 2013, the Department instructed Respondent to report changes which could affect her eligibility for benefits to the Department within 10 days of the date of the change, including changes in assets.
7. On January 29, 2014, Respondent obtained a warranty deed for a parcel of real property commonly known as [REDACTED] in Flint for \$ [REDACTED]
8. On February 20, 2014, Respondent's deed for the parcel of real property commonly known as [REDACTED] in Flint was recorded.
9. On December 16, 2014, the Department sent a Redetermination to Respondent to obtain information to review Respondent's eligibility for assistance.
10. The Department mailed the December 16, 2014, Redetermination to Respondent at [REDACTED] in Flint.
11. On January 29, 2015, Respondent returned the Redetermination to the Department with the information requested.
12. In the December 16, 2014, Redetermination, the Department asked Respondent if she had any assets and Respondent responded "no."
13. On September 15, 2015, the Department sent a Redetermination to Respondent to obtain information to review Respondent's eligibility for assistance.
14. The Department mailed the September 15, 2015, Redetermination to Respondent at [REDACTED] in Flint.
15. On October 29, 2015, Respondent returned the Redetermination to the Department with the information requested.
16. In the Redetermination, the Department asked Respondent if she had any assets and Respondent responded "no."

17. The Department issued a total of \$ [REDACTED] in FAP benefits to Respondent from November 2013 through March 2016 based on the information Respondent provided to the Department.
18. A concerned citizen reported to the Department that Respondent had unreported assets.
19. The Department conducted an investigation and discovered that Respondent owned two parcels of real property, [REDACTED] and [REDACTED].
20. The Department determined it overissued \$ [REDACTED] in FAP benefits to Respondent from November 2013 through March 2016 because Respondent had unreported assets which exceeded the asset limit for FAP benefits.
21. On December 20, 2017, the Department's OIG filed a hearing request to establish that Respondent committed an IPV.
22. 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.
23. 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.

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, Respondent received an overissuance of FAP benefits because the Department issued FAP benefits to Respondent when Respondent's countable assets exceeded the asset limit to be eligible for FAP benefits. Countable assets cannot exceed the asset limit for eligibility. BEM 400 (December 1, 2013), p. 1. The asset limit for FAP benefits is \$5,000. BEM 400, p. 5. On January 29, 2014, Respondent acquired a parcel of real property for

\$ [REDACTED] Thus, as of January 29, 2014, Respondent's assets exceeded the asset limit for FAP benefits. Therefore, Respondent was ineligible for FAP benefits.

Although Respondent had acquired a different parcel of real property on September 19, 2013, that parcel did not make Respondent ineligible because it did not cause Respondent's assets to exceed the asset limit for FAP benefits. Respondent only paid \$ [REDACTED] for the parcel. The amount paid for the parcel is the best evidence of the value of the parcel because it represents what a willing buyer and seller agreed the property was worth. The amount paid is also the best evidence here because the parcel was purchased less than two months before the date of Respondent's November 1, 2013, application for assistance. Since the value of the property was less than the asset limit, it did not make Respondent ineligible.

When Respondent acquired the parcel of real property on January 29, 2014, Respondent had 10 days to report it to the Department [BAM 105 (January 1, 2014), p. 9], the Department had 10 days to act [BAM 220 (January 1, 2014), p. 1], and then the Department's action could have been effective no sooner than 12 days after the Department acted (BAM 220, p. 9). Thus, the Department would have stopped Respondent's benefits effective April 2014 had Respondent timely reported her change in assets. Therefore, the overissuance first occurred for the month of April 2014, so Respondent received an overissuance of \$ [REDACTED] for April 2014 through March 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 (July 1, 2013) 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, p. 9. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent failed to report that she acquired a parcel of real property on January 29, 2014, within 10 days of the

acquisition. Respondent's failure to report this change to the Department must be considered an intentional misrepresentation to maintain her FAP 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 the Department to stop her FAP benefits. Further, Respondent deliberately answered "no" thereafter when the Department asked her if she had any assets, and Respondent knew or should have known that the Department would have found her ineligible for benefits and stopped her benefits if she would have answered "yes." 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 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.

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

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

Mark Epps
4809 Clio Road
Flint, MI
48504

Genesee Clio 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

