



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.: 17-016969
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 Christopher Tetloff, 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 October 12, 2010, Respondent applied for assistance from the Department, including FAP benefits.
2. In the application Respondent submitted on October 12, 2010, Respondent stated her address was [REDACTED].

3. In the application Respondent submitted on October 12, 2010, Respondent stated that the only members or her household in addition to herself were her two sons: [REDACTED] and [REDACTED].
4. In the application Respondent submitted on October 12, 2010, Respondent stated that [REDACTED] [REDACTED] was the father of [REDACTED] [REDACTED].
5. In the application Respondent submitted on October 12, 2010, Respondent acknowledged that she had received, reviewed, and agreed with the Department's information booklet.
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 December 23, 2010, [REDACTED] [REDACTED] submitted an insurance enrollment form to his employer and listed his address as [REDACTED].
8. On February 1, 2011, the Department sent a Semi-Annual Contact Report to Respondent to obtain information to review her eligibility for assistance.
9. On February 8, 2011, Respondent completed the Semi-Annual Contact Report.
10. In the Semi-Annual Contact Report Respondent completed, Respondent reported that she had not had any changes in her address or the members of her household.
11. On April 29, 2011, [REDACTED] purchased a parcel of real property commonly known as [REDACTED].
12. On May 20, 2011, [REDACTED] updated his address with his employer from [REDACTED] [REDACTED] to [REDACTED].
13. On June 15, 2011, Respondent submitted a notice of change of address to the Department in which Respondent reported that her new address was [REDACTED] [REDACTED].
14. On August 16, 2011, the Department sent a Redetermination to Respondent to obtain information to review her eligibility for assistance.
15. On August 22, 2011, Respondent completed the Redetermination.
16. In the Redetermination Respondent completed, Respondent reported that she had not had any changes in her address or the members of her household.

17. Respondent did not report that [REDACTED] was a member of her household while she was receiving FAP benefits.
18. [REDACTED] was employed and earning income while Respondent was receiving FAP benefits.
19. The Department issued FAP benefits to Respondent based on the information she provided to the Department.
20. The Department issued FAP benefits of \$ [REDACTED] to Respondent from January 2011 through April 2012.
21. In 2012, the Department discovered that it overissued FAP benefits to Respondent because Respondent had an unreported group member with income, [REDACTED]
22. The Department determined that it overissued FAP benefits of \$ [REDACTED] to Respondent from January 2011 through April 2012.
23. On December 19, 2017, the Department filed a hearing request to establish that Respondent received an OI of benefits and that Respondent committed an IPV.
24. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first IPV.
25. 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 overissuance. BAM 700 (October 1, 2010), p. 1. In this case, Respondent received more benefits than she was entitled to receive. The Department issued FAP benefits to Respondent without budgeting for an unreported group member with income.

A parent who lives with his child must be included as a group member. BEM 212 (September 1, 2010), p.1. [REDACTED] was a parent of a child living in Respondent's household and he lived with them, so he was a mandatory member of Respondent's group. A group's FAP benefits are determined based on the group's income. BEM 505 (October 1, 2010), p. 1. Since [REDACTED] was a mandatory member of Respondent's group and since he had income, Respondent's group had income.

The Department issued Respondent FAP benefits of \$ [REDACTED] from January 2011 through April 2012 without budgeting [REDACTED] [REDACTED] income. This caused the Department to overissue FAP benefits to Respondent because the unreported income made Respondent ineligible for the amount of FAP benefits the Department issued her. The Department issued FAP benefits of \$ [REDACTED] to Respondent from January 2011 through April 2012 when it should not have issued her any due to the unreported income. Thus, Respondent was overissued \$ [REDACTED] from January 2011 through April 2012.

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 (May 1, 2010) 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 provide complete and truthful answers to the Department on all forms. BAM 105 (January 1, 2010), p. 5. The Department clearly and correctly instructed Respondent to

provide complete and truthful answers. Respondent failed to provide complete and truthful answers when she failed to disclose that the father of one of her children was living with her. Respondent's failure to report this information to the Department must be considered an intentional misrepresentation to obtain or maintain her FAP benefits since Respondent knew or should have known that she was required to report that he was living with her and that reporting it would have caused a reduction in her 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. 12. 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. 13. 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. 12.

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

Holly DeGroat
515 South Sandusky
Sandusky, MI
48471

Sanilac 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

