



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR



Date Mailed: June 26, 2018
MAHS Docket No.: 17-017027
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 21, 2018, from Lansing, Michigan. The Department was represented by Becky Mietz, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] 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 August 27, 2013, Respondent applied for assistance from the Department, including FAP benefits.

2. In the application that Respondent submitted on August 27, 2013, the Department instructed Respondent to report all changes in her circumstances which could affect her eligibility for assistance to the Department within 10 days of the date of the change.
3. On September 27, 2013, the Department issued a Notice of Case Action to Respondent. The Notice of Case Action advised Respondent that she was approved for FAP benefits. The Notice of Case Action instructed Respondent to report all changes in her circumstances which could affect her eligibility for assistance to the Department within 10 days of the date of the change. The Department included a blank Change Report with its Notice of Case Action so that Respondent could report changes to the Department at any time.
4. In January 2014, Respondent began receiving regular payments for puppies she was selling. Respondent was holding herself out to others as a dog breeder.
5. From January 2014 through December 2014, Respondent received \$4,400.00.
6. Respondent did not report any of the income she received to the Department.
7. The Department issued FAP benefits to Respondent as if Respondent did not have the income. The Department issued Respondent \$4,212.00 in FAP benefits from March 2014 through December 2014.
8. The Department conducted an investigation of Respondent's case and discovered that Respondent had unreported income.
9. On December 28, 2017, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
10. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first IPV.
11. A notice of hearing was mailed to Respondent at her last known address and was not returned by the United States Postal Service 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 (July 1, 2013), p. 1. In this case, Respondent received more benefits than she was entitled to receive. The Department issued more FAP benefits to Respondent than she was eligible to receive because she had unreported income which reduced the amount of FAP benefits she was eligible for.

The Department alleged that Respondent received an overissuance of \$1,552.00, but I find that the Department did not present sufficient evidence to establish an overissuance of \$1,552.00. The Department calculated the overissuance amount in part based on a \$450.00 receipt from [REDACTED] in July 2014, but the Department's evidence only established that Respondent received \$350.00 from [REDACTED] in July 2014. Thus, Respondent did not receive as much income as the Department used in its overissuance calculation. Therefore, Respondent's monthly budgetable unreported income was \$275.00 rather than \$281.25. Based on this unreported income, the overissuance was \$1,533.00 from March 2014 through December 2014.

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 she received the first payment reflecting the change. BAM 105 (January 1, 2014), p. 9-10. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent failed to report that she began receiving

income from selling puppies within 10 days of receiving her first payment in January 2014. 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 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. 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 \$1,533.00 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 \$1,533.00 in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall be disqualified from FAP benefits for a period of one year.

JK/hb



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 County (Clio), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

