



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: June 8, 2018
MAHS Docket No.: 18-000643
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 6, 2018, from Lansing, Michigan. The Department was represented by Brian Siegfried, Regulation Agent of the Office of Inspector General (OIG). The Respondent did not appear. The hearing was conducted 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. In February of 2014, the Department approved Respondent's group for FAP benefits based on the income Respondent reported - \$0.00/ month for Respondent and \$ [REDACTED] per month for Respondent's housemate.
2. On February 21, 2014, the Department issued a Notice of Case Action to Respondent which advised Respondent that she was approved for FAP benefits

and instructed Respondent to report within 10 days if her household's gross monthly income exceeded \$2,552.00 (Respondent's simplified reporting limit).

3. Respondent did not have any apparent physical or mental impairment which would have limited her understanding or ability to fulfill her reporting responsibility.
4. On February 27, 2014, Respondent began employment at [REDACTED] [REDACTED].
5. On March 14, 2014, Respondent received her first payroll remittance from [REDACTED] [REDACTED].
6. In April of 2014, Respondent's household's monthly gross income exceeded \$ [REDACTED].
7. Respondent did not report to the Department that her household's monthly gross income exceeded \$ [REDACTED].
8. The Department continued to issue FAP benefits to Respondent as if Respondent's household's monthly gross income did not exceed \$ [REDACTED].
9. On July 5, 2014, Respondent completed a Semi-Annual Report in which the Department asked Respondent if her household's monthly gross income had changed by more than \$ [REDACTED] per month from the previously reported monthly gross income of \$ [REDACTED] per month. Respondent answered "No."
10. Respondent's household's gross monthly income for the most recent completed month before Respondent completed the Semi-Annual Report (June) was \$ [REDACTED].
11. On July 25, 2014, Respondent completed a Redetermination in which the Department asked Respondent to provide income information for all members of her household; Respondent did not list her income from [REDACTED].
12. Respondent was still employed by [REDACTED] and earning an income at the time that she completed the Redetermination on July 25, 2014.
13. The Department reviewed Respondent's case and discovered that Respondent had failed to report that her household's monthly gross income exceeded \$ [REDACTED].
14. The Department determined that Respondent was overissued [REDACTED] in FAP benefits from June 1, 2014, through February 28, 2015, because Respondent had unreported income which put her over the gross income limit.

15. On January 22, 2018, the Department's OIG filed a hearing request to establish that Respondent received an OI of benefits and that Respondent committed an IPV.
16. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first IPV.
17. 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.

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's group received more benefits than it was entitled to receive because the Department issued more FAP benefits to Respondent than her group was eligible to receive. Respondent was not eligible for the FAP benefits that the Department issued to Respondent because Respondent's income exceeded the FAP benefits gross income limit for eligibility. The Department established that Respondent was overissued \$ [REDACTED] from June 2014 through February 2015.

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 that her household's monthly gross income exceeded her simplified reporting limit within 10 days of the end of the month it was first exceeded. BAM 200 (December 1, 2013), p. 1. The Department clearly and correctly instructed to report when her household's monthly gross income exceeded her simplified reporting limit of \$ [REDACTED]. Respondent's household's monthly gross income first exceeded her simplified reporting limit in April 2014, and Respondent failed to report it by May 10, 2014, as instructed. 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. The Department established that 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:

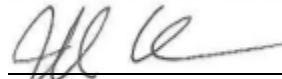
1. Respondent received an overissuance of FAP benefits in the amount of \$ [REDACTED] that the Department is entitled to recoup.
2. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.

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

Laura Bensinger
1050 Independence Blvd
Charlotte, MI
48813

Eaton 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

