



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: July 9, 2018
MAHS Docket No.: 18-000815
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 July 5, 2018, from Lansing, Michigan. The Department was represented by Stephanie Avery, 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 March 14, 2008, [REDACTED] [REDACTED] was found guilty of a felony drug offense which occurred on November 6, 2007.
2. On April 8, 2014, [REDACTED] [REDACTED] was found guilty of a felony drug offense which occurred on December 5, 2009.

3. On August 7, 2014, Respondent applied for assistance from the Department, including FAP benefits. In the application Respondent submitted, Respondent listed [REDACTED] [REDACTED] as her husband and a member of her household. The application asked if anyone in Respondent's household had been convicted of a drug felony and Respondent answered "no." Respondent signed her application and thereby affirmed that she understood the questions in the application and that she provided true and complete information.
4. Respondent did not have any apparent physical or mental impairment which would have limited her understanding or her ability to answer the questions on her application truthfully and completely.
5. The Department approved Respondent for FAP benefits based on the information she provided in her application. The Department issued FAP benefits to Respondent from September 2014 through August 2015.
6. The Department conducted an investigation of Respondent's case and determined that Respondent's husband had two or more felony drug convictions which Respondent had not reported. The Department determined that it overissued Respondent \$2,003.00 in FAP benefits from September 2014 through August 2015 because [REDACTED] [REDACTED] was included as a group member when he was not eligible since he had two or more felony drug convictions which permanently disqualified him from receiving FAP benefits.
7. On January 26, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
8. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first IPV.
9. A notice of hearing was mailed to Respondent at her last known address and it 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

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (May 1, 2014), p. 1. When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1. In this case, Respondent received more FAP benefits than she was entitled to receive. An individual who has been convicted of two or more felony drug offenses which occurred after August 22, 1996, is permanently disqualified from receiving FAP benefits. BEM 203 (July 1, 2014), p. 2. Respondent's husband was included as a member of Respondent's group, but he should not have been because he was permanently disqualified since he had two or more felony drug convictions which occurred after August 22, 1996. Thus, the Department issued more FAP benefits to Respondent than she was entitled to receive because the Department calculated her benefits based on too many group members since it did not exclude Respondent's husband.

The Department alleged that Respondent received an overissuance of \$2,003.00 for September 2014 through August 2015, but the Department did not present sufficient evidence to establish that Respondent received an overissuance in the amount alleged. The Department's allegation was that Respondent received an overissuance because one group member was erroneously included in the Department's original issuance budget; the Department did not allege that anyone had unreported income. Any income properly budgeted in the original issuance budget remains the same in that month's corrected budget. BAM 720 (May 1, 2014), p. 10. Since the Department did not allege that Respondent's income was not properly budgeted, the Department should have used the same income it used in its original issuance budget. However, the Department calculated Respondent's correct issuance for September 2014 and June 2015 based on an income amount greater than the amount used in its original issuance budget. This caused the Department to allege a greater overissuance than what was caused by erroneously including one group member. The overissuance which was caused by erroneously including one group member was only \$1,608.00 for September 2014 through August 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, 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 completely and truthfully answer all questions on forms and in interviews. BAM 105 (April 1, 2014), p. 6. The Department clearly and correctly instructed Respondent to provide true and complete information on his application. Respondent failed to completely and truthfully answer all questions on her application for assistance. In the application, the Department asked Respondent if anyone in her household had any felony drug convictions, and Respondent answered “no” when in fact her husband had two felony drug convictions. Respondent knew or should have known that her husband had felony drug convictions, especially since he was living in her household and his last conviction occurred only four months before Respondent completed her application. Respondent intentionally misrepresented information to the Department to obtain or increase her benefits because she withheld information about her husband’s felony drug convictions when she knew or should have known that the Department would consider the information in determining her eligibility for 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:

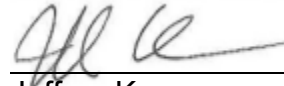
1. Respondent received an overissuance of FAP benefits in the amount of \$1,608.00 that the Department is entitled to recoup.
2. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.

3. Respondent should be disqualified from receiving FAP benefits.

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$1,608.00 in accordance with Department policy.

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

JK/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

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Wayne 17 County DHHS- via electronic
mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

DHHS

Tara Roland 82-17
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Respondent

[REDACTED]
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