



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 13, 2018
MAHS Docket No.: 18-001585
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 12, 2018, from Lansing, Michigan. The Department was represented by Dory Bryant, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] appeared and represented herself. Respondent had one witness, [REDACTED] her husband.

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 2013, Respondent lost her job and separated from her husband, Jerome Wilder.
2. While Respondent and her husband were separated, he continued to use the same address as Respondent. However, he stayed with family and friends. [REDACTED] [REDACTED] was still involved with Respondent because they had a minor child together and the child lived with Respondent.

3. On or about July 2016, Respondent rekindled her relationship with her husband and he moved back in with her. Respondent's husband had income from social security at the time that he moved back in with Respondent.
4. Respondent was receiving FAP benefits from the Department at the time that her husband moved back in with her.
5. Respondent did not report to the Department that her husband moved back in with her.
6. The Department continued to issue FAP benefits to Respondent without considering her husband's income.
7. On February 4, 2017, the Department issued a Redetermination to Respondent to obtain information from Respondent to review her eligibility for FAP benefits. In the Redetermination, the Department specifically asked Respondent to verify the members of her household.
8. On February 20, 2017, Respondent returned the completed Redetermination to the Department. In the completed Redetermination, Respondent represented that the only members of her household were herself and her child. Respondent did not disclose that her husband was a member of her household.
9. 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.
10. The Department conducted an investigation of Respondent's case and discovered that she had unreported income because she did not report that her husband moved in her household and that he had income.
11. On February 15, 2018, the Department filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
12. The OIG requested recoupment of a \$10,382.00 overissuance of FAP benefits issued from April 2014 through April 2017, and the OIG requested that 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

An overissuance is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. BAM 700 (October 1, 2016), 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 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 (January 1, 2017), p.1. [REDACTED] [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 (July 1, 2016), p. 1. Since Jerome Wilder was a mandatory member of Respondent's group and since he had income, the Department should have considered his income when budgeting Respondent's FAP benefits.

The Department alleged that [REDACTED] [REDACTED] was a member of Respondent's household as of April 2014, but the Department did not present sufficient evidence to establish that he was in fact living in her household as of April 2014. The evidence established that [REDACTED] [REDACTED] moved out of Respondent's household in 2013 and did not move back in until approximately July 2016. Since [REDACTED] [REDACTED] did not move back in Respondent's household until July 2016, he became a member of her household in July 2016. Once [REDACTED] [REDACTED] became a member of Respondent's household, Respondent had 10 days to report the change to the Department, the Department then had 10 days to act on the change, and then any negative action would have required a waiting period of at least 12 days. Thus, the first month that the change in Respondent's household could have affected her FAP benefits would have been September 2016. Therefore, the overissuance period here is September 2016 through April 2017.

From September 2016 through April 2017, the Department issued Respondent \$2,252.00 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 should not have issued Respondent any FAP benefits because the unreported income made Respondent ineligible for FAP benefits. Thus, Respondent was overissued \$2,252.00 from September 2016 through April 2017.

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 (January 1, 2016) 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 (October 1, 2016), p. 9. The Department clearly and correctly instructed Respondent to provide complete and truthful answers. When Respondent returned the Department's completed Redetermination on February 20, 2017, Respondent misrepresented that [REDACTED] [REDACTED] was not living with her. Respondent's misrepresentation 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 provide complete and truthful answers.

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

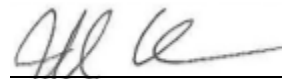
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of FAP benefits in the amount of \$2,252.00 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 \$2,252.00 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

DHHS

Lauren Casper
27690 Van Dyke
Warren, MI
48093

Macomb 20 County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
PO Box 30062
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Respondent

[REDACTED]
MI