



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: July 13, 2018
MAHS Docket No.: 18-001678
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 11, 2018, from Lansing, Michigan. The Department was represented by Valerie Mathis, 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 July 23, 2013, Respondent applied for emergency assistance from the Department. In Respondent's application, Respondent disclosed that [REDACTED] was the father of the minor children living in her household.

2. On July 15, 2014, the Department issued a Redetermination to Respondent to obtain information from Respondent to review her eligibility for assistance, including FAP benefits.
3. On July 30, 2014, Respondent returned the completed Redetermination to the Department. Respondent represented that the only members of her household were herself and her two minor children. Respondent represented that she was the only source of income for her household. Respondent signed the document and thereby affirmed that the information she provided was true and complete.
4. 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.
5. At the time that Respondent returned the completed Redetermination to the Department, [REDACTED] [REDACTED] was living with Respondent. [REDACTED] was listed on Respondent's lease and his address of record with his place of employment at the time was the same as Respondent's. [REDACTED] was earning income from his employment.
6. The Department issued FAP benefits to Respondent based on the information she provided to the Department in response to its July 30, 2014, Redetermination. The Department issued FAP benefits to Respondent from August 2014 through January 2016.
7. The Department did not take into consideration [REDACTED] income because Respondent did not disclose that he was living in her household and earning income.
8. The Department later discovered that [REDACTED] was living in Respondent's household and earning income.
9. The Department determined that it overissued FAP benefits to Respondent due to [REDACTED] unreported income.
10. On February 23, 2018, the Department's OIG filed a hearing request to establish that Respondent received an OI of benefits and that Respondent committed an IPV.
11. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first IPV.
12. 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), Adult Services Manual (ASM), 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 benefits than she was entitled to receive. The Department issued more FAP benefits to Respondent than what she was entitled to receive because it issued FAP benefits to Respondent without considering Larry Burnette's income.

Parents and their children under 22 years of age who live together must be in the same group. BEM 212 (July 1, 2014), p. 1. The Department should have considered Larry Burnette's income because he was a mandatory member of Respondent's group since he was the father of her minor children and living together with them. Larry Burnette's unreported income decreased the amount of FAP benefits Respondent was actually eligible for. Thus, the Department established that Respondent was overissued FAP benefits.

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, 2014) 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)).

Respondent was required to provide complete and truthful answers to the Department on all forms. BAM 105 (April 1, 2014), p. 6. The Department clearly and correctly instructed Respondent to provide complete and truthful answers. Respondent failed to provide complete and truthful answers when she returned a completed Redetermination on July 30, 2014, and failed to disclose that Larry Burnette was living in her household and earning income. 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, pp. 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.

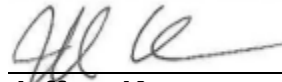
DECISION AND ORDER

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.
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 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

Latasha McKinney-Newell
26355 Michigan Ave.
Inkster, MI 48141

Wayne County (District 19), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED]
[REDACTED], MI [REDACTED]