



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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Date Mailed: July 30, 2018
MAHS Docket No.: 18-002057
Agency No.: 103513489
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: John Markey

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 24, 2018, from Lansing, Michigan. The Department was represented by Maria Williams, Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e). During the hearing, 66 pages of documents were offered and admitted as Department's Exhibit A, pages 1-66.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance (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 November 27, 2015, Respondent returned a completed Redetermination, Form 1010, online to the Department and included an ongoing request for FAP benefits. Exhibit A, pages 9-15.

2. On the Redetermination, Respondent indicated that nobody in the household had income. Exhibit A, page 11.
3. The Department issued Respondent \$194.00 of FAP benefits each month from January 1, 2016, through December 31, 2016, for a total of \$2,328.00. Exhibit A, pages 40-42.
4. On January 5, 2017, Respondent filed an application for benefits with the Department. Exhibit A, pages 16-37.
5. On the application, Respondent indicated that she began working for Maple Appliance on November 21, 2016. Exhibit A, page 28.
6. On the application, Respondent acknowledged her duty to report starting or stopping of employment within ten days of receiving her first or last paycheck. Exhibit A, pages 35-36.
7. Respondent signed the application, thereby certifying that all information contained within the application was truthful. Exhibit A, pages 35-36.
8. The application further informed Respondent that if she was dishonest on the application or intentionally failed to report a change in circumstances and received benefits to which she was not entitled, she could be disqualified from the program and be required to pay back any benefits wrongfully received. Exhibit A, pages 35-36.
9. From November of 2015 through at least February of 2017, Respondent worked at Maple Appliance Services. Exhibit A, pages 38-39.
10. The first time Respondent informed the Department of her job with Maple Appliance Services was on the January 5, 2017 application, where she indicated she began working for Maple Appliance Services on November 21, 2016. Exhibit A, page 28.
11. Based on Respondent's failure to inform the Department of her income, the Department issued Respondent FAP benefits based on an income of zero. Exhibit A, pages 40-66.
12. On February 5, 2017, the Maple Appliance Services reported to the Department that Respondent began working for Maple Appliance Services in November of 2015 and was still employed. Further, Maple Appliance Services provided to the Department a list of paychecks, including their issuance dates and amounts, issued to Respondent from December 3, 2015, through December 29, 2016.

13. The Department's OIG filed a hearing request on March 6, 2018, to establish an OI of FAP benefits issued to Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, page 1.
14. This is Respondent's first alleged IPV, and the OIG has requested that Respondent be disqualified from receiving FAP benefits for a period of one year. Exhibit A, page 1.
15. The OIG considers the fraud period to be January 1, 2016, through December 31, 2016.
16. During the fraud period, Respondent was issued \$2,328.00 in FAP benefits. Exhibit A, page 42.
17. During the fraud period, Respondent was only entitled to FAP benefits of \$98.00. Exhibit A, pages 42-66.
18. The Department alleges that Respondent received an OI of FAP benefits in the amount of \$2,230.00. Exhibit A, pages 1-3 and 42.
19. Respondent did not have any apparent mental physical impairment that would limit her understanding or ability to fulfill her reporting requirement.
20. A Notice of Hearing was mailed to Respondent at the last known address and 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), 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 (October 1, 2016), p. 1. When a client group receives more benefits than it is 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 determined Respondent's eligibility without budgeting her wages from her employment with Maple Appliance Services, which caused Respondent's income to be understated. Respondent's unreported income reduced the amount of FAP benefits that Respondent was eligible to receive. The Department presented sufficient evidence to establish that Respondent was overissued \$2,230 of FAP benefits from January 1, 2016, through December 31, 2016.

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; (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 his or her reporting responsibilities. BAM 720 (January 1, 2016) page 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, page 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 accurately and honestly answer all questions on the application she filed on January 5, 2017. BAM 105, page 9 (October 1, 2016).

In this case, the Department has met its burden. The Department clearly and correctly informed Respondent on the application that she must honestly answer the questions presented and warned Respondent that failure to do so could result in disqualification and a requirement to repay the benefits improperly received as a result. Further, there is no evidence on the record that Respondent suffers from a physical or mental impairment that would prevent her from understanding or carrying out her responsibilities under the policies.

Despite being adequately informed of her duties, Respondent affirmatively misrepresented her employment history on the January 5, 2017, application by claiming to have started employment with Maple Appliance Services on November 21, 2016, instead of indicating the truthful answer that she started in November of 2015. Respondent's failure to honestly disclose the duration of her employment with Maple Appliance Services displays an intent to deceive the Department, as Respondent was informed in the application packet that income could reduce benefits and that she was required to report a change in income soon after it occurred. Given that she had been employed for over one year and reported nothing, Respondent's dishonest answer is most appropriately viewed as an intentional act to deceive the Department into believing

that she recently started the job and should only have a short duration of her benefits reduced, as opposed to all of the benefits she received over the previous year.

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, pages 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, page 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 from receiving FAP benefits.

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 \$2,230.00 that the Department is entitled to recoup and/or collect.
2. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to her FAP benefits.
3. Respondent is subject to a one-year disqualification from receiving FAP benefits.

IT IS ORDERED that the Department may initiate recoupment and/or collection procedures for the total overissuance amount of \$2,230.00 established in this matter, less any amounts already recouped and/or collected.

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

JM/dh



John Markey
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

