



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.: 18-002486
Agency No.: 113692929
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 Titles 7 and 42 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16 and 42 CFR 431.230(b). After due notice, a telephone hearing was held on July 24, 2018, from Lansing, Michigan. The Department was represented by Christopher Fechter, Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and represented herself. During the hearing, 65 pages of documents were offered and admitted as Department's Exhibit A, pages 1-65.

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 October 5, 2010, Respondent submitted an application for assistance to the Department, including FAP benefits and indicated that she had no income. Exhibit A, page 10-24.

2. Respondent signed the application, thus certifying that all information contained in the application and provided to the Department was true and that she received and reviewed the Application Booklet. Exhibit A, page 24.
3. From March 1, 2011, through October 31, 2011, the Department issued Respondent \$200.00 of FAP benefits per month based on a reported income of zero. Exhibit A, pages 29-66.
4. On or about January 11, 2011, Respondent began working at Walmart, where she worked until on or about July 19, 2011. Exhibit A, pages 26-28.
5. Respondent did not report her employment with Walmart to the Department.
6. In October 2011, the Department became aware of Respondent's prior employment with Walmart.
7. In 2013, the Department forwarded the matter to the prosecutor's office, where it sat until early 2018, when it was returned to the Department.
8. On March 14, 2018, the Department's OIG filed a hearing request to establish an IPV.
9. The Department's OIG requested that Respondent be disqualified from receiving FAP benefits for one year for a first alleged IPV.
10. The Department considers the alleged fraud period to be from March 1, 2011, through August 31, 2011. Exhibit A, page 4.
11. During the alleged fraud period, Respondent was issued \$1,200 of FAP benefits, and the Department believes Respondent was only entitled to \$354.00 during that time period.
12. Respondent did not have any apparent mental or physical impairment that would limit her understanding or ability to fulfill her reporting requirements.

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, 2010), 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 did not take into account income from Respondent's job with Walmart from January of 2011 through August of 2011 when the Department calculated the amount of FAP benefits that Respondent was eligible to receive. As a result, the Department found Respondent eligible for more FAP benefits than she was eligible to receive, and the Department issued her more FAP benefits than she was eligible to receive. The Department showed by clear and convincing evidence that Respondent was overissued \$846.00 during the time from March 1, 2011, through August 31, 2011.

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 their reporting responsibilities. BAM 720 (May 1, 2010) 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)). Clients must report obtaining new employment that potentially affects eligibility or benefit amount within 10 days of receiving the first paycheck.

In this case, the Department has not met its burden. The Department did not present sufficient evidence to establish by clear and convincing evidence that Respondent committed an IPV. First, the Department did not present sufficient evidence to establish it clearly and correctly instructed Respondent regarding her reporting responsibilities. On the application, Respondent did acknowledge that she received certain instructions in the Application Booklet. However, the Department did not present a copy of the instructions that Respondent acknowledged receiving. Without knowing what those

instructions were, it is impossible to find on this record that Respondent was clearly and correctly instructed regarding her reporting requirements. Because clear and correct instructions are a condition to finding an IPV, the failure to prove they were given is fatal to an allegation of an IPV.

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, page 13. In general, clients are disqualified for standards disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, page 13.

In this case, there was no IPV. Therefore, Respondent is not subject to a 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. The Department has not established, by clear and convincing evidence, that Respondent committed an IPV.
2. Respondent should not be disqualified from receiving FAP benefits.
3. Respondent received an overissuance of FAP benefits in the amount of \$846.00.

IT IS ORDERED THAT Respondent shall not be disqualified from FAP benefits.

IT IS FURTHER ORDERED that the Department is authorized to initiate recoupment and/or collection procedures for the total overissuance of \$846.00, less any amounts already recouped/collected.

JM/dh



John Markey
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

Mark Epps
4809 Clio Road
Flint, MI 48504

Genesee County (District 6), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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