



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.: 18-002768
Agency No.: 112511364
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 25, 2018, from Lansing, Michigan. The Department was represented by Martin O’Sullivan, 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, 35 pages of documents were offered and admitted as Department’s Exhibit A, pages 1-35.

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 September 16, 2008, ██████████ pled guilty to a felony drug offense in Wayne County, Michigan. Exhibit A, pages 17-19.

2. On March 11, 2016, Respondent submitted to the Department an application for renewed benefits, including FAP benefits. Exhibit A, pages 10-16.
3. Respondent had a group size of four, including [REDACTED]. Exhibit A, page 14.
4. By signing the application, Respondent certified that all information contained within the application was true and complete to the best of her knowledge. Exhibit A, page 16.
5. The Department approved Respondent's application for FAP benefits based on the information provided in her application. Exhibit A, pages 23-24.
6. On September 16, 2016, [REDACTED] pled guilty to a felony drug offense in Wayne County, Michigan. Exhibit A, pages 21-22.
7. From November of 2016 through March of 2017, the Department issued Respondent \$649.00 in FAP benefits each month for a total of \$3,245.00. Exhibit A, pages 23-25.
8. The Department conducted an investigation of Respondent's case and determined that a member of Respondent's group, [REDACTED], had two or more felony drug convictions. Exhibit A, page 3.
9. The Department's OIG filed a hearing request on March 21, 2018, to establish an OI of FAP benefits received by Respondent totaling \$690.00. Exhibit A, pages 1-2.
10. The OIG considered Respondent's failure to report her group member's second felony-related drug conviction an IPV and requested that Respondent be disqualified from receiving FAP benefits for a period of 12 months. Exhibit A, page 1.
11. The Department is seeking to recoup FAP benefits issued from November 1, 2016, through March 31, 2017, totaling \$690.00.
12. Respondent did not have an apparent physical or mental impairment that would limit her understanding or ability to fulfill her reporting responsibilities.
13. This was Respondent's first alleged IPV.
14. 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 individual convicted of two or more drug related felonies for conduct that occurred after August 22, 1996, is permanently disqualified from receiving FAP benefits. BEM 203 (October 1, 2015), page 2. When an ineligible client is issued benefits or an eligible client is issued more benefits than the client group is entitled, the Department must attempt to recoup the OI. BAM 700 (January 1, 2016), page 1.

██████████ was included as a member of Respondent's group. As of his second drug related felony conviction on September 16, 2016, ██████████ was permanently disqualified from receiving FAP benefits and should not have been counted as a group member. However, from November 1, 2016, through March 31, 2017, the Department issued Respondent FAP benefits based on a group size of four, including ██████████. Had ██████████ been properly excluded from the group, the Department would have issued benefits to Respondent based on a group size of three. 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.

In this case, the Department showed by clear and convincing evidence that Respondent was overissued FAP benefits. For each of the five months involved, Respondent was issued \$649.00 for a total of \$3,245.00. Based on the proper group size of three, Respondent should have only been issued \$511.00 per month for a total of \$2,555.00. Thus, the overissuance involved comes to \$690.00.

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) 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, the Department has not met its burden. Respondent was required to report changes in her circumstances to the Department within 10 days of the date of the change. BAM 105 (July 1, 2015), pages 11-11. Further, she did not suffer from any apparent physical or mental impairment. However, the Department failed to show by clear and convincing evidence that Respondent was clearly and correctly instructed regarding her obligation to report changes to the Department within 10 days. The Department's position is that Respondent's signature on the March 11, 2016, application shows that she was clearly informed of the requirement to report any changes. To the contrary, the documents presented at the hearing merely informed Respondent that if she filled out the form in an untruthful manner, she would be subject to penalties and required her to certify that her representations were truthful and complete. Upon reviewing this matter in its entirety, it is clear that the record is silent regarding any ongoing reporting requirements. Thus, the Department has failed to meet its burden of proving all of the three elements required to establish 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, pages 15-16. 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 16.

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 received an overissuance of FAP benefits in the amount of \$690.00 that the Department is entitled to recoup and/or collect.

IT IS ORDERED that the Department is authorized to initiate recoupment and/or collection procedures for the total overissuance amount of \$690.00 established in this matter, less any amounts already recouped and/or collected.

IT IS FURTHER ORDERED that Respondent shall not be disqualified from receiving FAP benefits as a result of this case.



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

Deborah Little
5131 Grand River Ave.
Detroit, MI 48208

Wayne County (District 49), 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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