



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
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[REDACTED] MI [REDACTED]

Date Mailed: July 27, 2018
MAHS Docket No.: 18-005260
Agency No.: 113097577
Petitioner: OIG
Respondent: [REDACTED]

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 19, 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, 63 pages of documents were offered and admitted as Department's Exhibit A, pages 1-63.

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 January 31, 2016, Respondent applied for assistance from the Department, including FAP benefits. Exhibit A, page 10.

2. On the application, Respondent indicated that he was not employed. Exhibit A, page 14.
3. On the application, Respondent acknowledged his duty to report starting employment within ten days of receiving his first paycheck. Exhibit A, pages 17-18.
4. The application further informed Respondent that if he intentionally failed to report a change in circumstances and received benefits to which he was not entitled, he could be disqualified from the programs and be required to pay back any benefits wrongfully received. Exhibit A, pages 17-19.
5. From July 1, 2016, through December 30, 2016, Respondent worked part time at United Car Company, Inc. Respondent worked 20 hours per week at an hourly rate of [REDACTED]. Exhibit A, pages 37-45.
6. From the time Respondent applied for benefits on January 31, 2016, through the end of 2016, Respondent never reported any income to the Department.
7. Based on Respondent's failure to inform the Department of his income, the Department issued Respondent FAP benefits based on an income of zero. Exhibit A, page 54.
8. On December 5, 2016, the Department issued a Redetermination, Form 1010, to Respondent to obtain relevant information regarding Respondent's ongoing eligibility for benefits. Section 11 required Respondent to report income and employment changes. Exhibit A, pages 46, 50.
9. On January 6, 2017, the Department received the completed Redetermination from Respondent. Respondent did not provide any information regarding income or employment. Exhibit A, pages 46-53.
10. The Department's OIG filed a hearing request on May 1, 2018, to establish an OI of FAP benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, page 1.
11. Respondent was proven to have committed an IPV by intentionally failing to disclose his income or employment to the Department.
12. This is Respondent's first IPV, and the OIG has requested that Respondent be disqualified from receiving FAP benefits for a period of one-year.
13. The OIG considers the fraud period to be September 1, 2016, through December 31, 2016.

14. During the fraud period, Respondent was issued \$1,428 in FAP benefits. Exhibit A, pages 3, 54-55.
15. During the fraud period, Respondent was only entitled to FAP benefits of \$689. Exhibit A, pages 55-63.
16. The Department alleges that Respondent received an OI of FAP benefits in the amount of \$739.
17. Respondent did not have any apparent mental physical impairment that would limit his understanding or ability to fulfill his reporting requirement.
18. 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 (January 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 he was entitled to receive. The Department determined Respondent's eligibility without budgeting his wages from his employment with United Car Company, Inc., 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 \$739 of FAP benefits from September 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)).

In this case, the Department has met its burden. Respondent was required to report changes in his circumstances to the Department within 10 days of the date of the change. BAM 105 (April 1, 2016), pages 11-12. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent failed to report that he was employed or had any income despite working every week from July 1, 2016, through the end of the year.

Respondent's failure to report this change to the Department must be considered an intentional misrepresentation to maintain his FAP benefits since Respondent knew or should have known that he was required to report the change to the Department and that reporting the change to the Department would have caused the Department to recalculate and reduce his FAP benefits. Further bolstering this conclusion is the fact that Respondent neglected to include the employment or income information when he submitted the completed Redetermination in early 2017. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his 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, 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 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 \$739 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 his 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 \$739 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

