



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: August 2, 2018
MAHS Docket No.: 18-001992
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 August 1, 2018, from Lansing, Michigan. The Department was represented by Ryan Sevenski, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] appeared and represented herself.

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 January 7, 2016, the Department issued a Notice of Case Action to Respondent which notified Respondent that she had been approved for FAP benefits and instructed Respondent to report to the Department when her group's income exceeded \$3,529.00. per month. Exhibit A, p. 17-20.
2. Respondent did not have any apparent physical or mental impairment which would have limited her understanding or ability to fulfill her reporting responsibility.

3. In March of 2016, Respondent's group's income exceeded \$3,529.00 per month. Exhibit A, p. 34.
4. Respondent did not report to the Department that her group's income exceeded \$3,529.00.
5. On June 1, 2016, the Department issued a Semi-Annual Contact Report to Respondent to obtain information from Respondent to review her eligibility. Exhibit A, p. 22-23.
6. On June 28, 2016, Respondent completed the Semi-Annual Contact Report and answered "No" that her group's income had not changed by more than \$100.00 from \$3,238.00. Respondent reported that she had a change in her rent expense and that her rent was now \$900. Exhibit A, p. 22-23.
7. On September 10, 2016, the Department issued a Notice of Case Action to Respondent which notified Respondent that she had been approved for FAP benefits and instructed Respondent to report to the Department when her group's income exceeded \$3,530.00. per month. Exhibit A, p. 24-28.
8. In September 2016, Respondent's group's income exceeded \$3,530.00 per month. Exhibit A, p. 33.
9. Respondent did not report to the Department that her group's income exceeded \$3,530.00.
10. The Department discovered that Respondent's group had more income than reported when the Department performed a wage match in October 2016. The Department determined that Respondent was overissued \$1,232.00 in FAP benefits from May 1, 2016 through November 30, 2016.
11. On February 28, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV. Exhibit A, p. 1.
12. The OIG requested recoupment of a \$1,232.00 overissuance of FAP benefits issued from May 2016 through November 2016, and the OIG requested that Respondent be disqualified from receiving program benefits for 12 months for a first IPV.

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 entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1. In this case, Respondent's group received more benefits than it was entitled to receive. Respondent's group's income exceeded her simplified reporting limit, and Respondent failed to report it to the Department. As a result, the Department issued FAP benefits to Respondent as if her income was still at or below her simplified reporting limit. This caused the Department to issue more FAP benefits to Respondent than what she was eligible for. The Department presented sufficient evidence to establish that Respondent was overissued \$1,232.00.

Respondent correctly pointed out that her correct rent expense of \$900 was not used when determining the amount of her overissuance. The Department did erroneously use a rent expense of \$800 instead of \$900, but it did not affect the amount of the overissuance. Respondent first reported her change in rent expense on June 28, 2016, so the first month that it could have been budgeted was July 2016. For the months of July 2016 through November 2016, the overissuance is the same whether calculated based on a rent expense of \$900 or \$800 because neither would have caused Respondent to have a deductible excess shelter expense. Only monthly shelter expenses in excess of 50 percent of a household's income after all deductions are deductible. 7 CFR 273.9(d)(6)(ii). Here, Respondent's shelter expenses did not exceed 50 percent of her household's income from July 2016 through November 2016 when budgeting a rent expense of \$900 per month. Thus, Respondent was not eligible for a deductible excess shelter expense. Therefore, the overissuance amount that was calculated is correct even though it used the incorrect rent expense.

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 (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, I find that the Department has met its burden. Respondent was required to report that her group's monthly gross income exceeded her simplified reporting limit within 10 days of the end of the month it was first exceeded. BAM 200 (December 1, 2013), p. 1. The Department clearly and correctly instructed Respondent to report when her household's monthly gross income exceeded her simplified reporting limit. Respondent's group's monthly gross income first exceeded her simplified reporting limit in March 2016, and Respondent failed to report it by April 10, 2016, as instructed. Respondent's failure to report this change to the Department must be considered an intentional misrepresentation to maintain her FAP benefits since Respondent knew or should have known that she was required to report the change to the Department and that reporting the change to the Department 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, p. 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

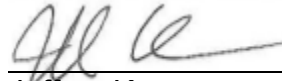
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of FAP benefits in the amount of \$1,232.00 that the Department is entitled to recoup.
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 the Department may initiate recoupment procedures for the amount of \$1,232.00 in accordance with Department policy.

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

JK/nr



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

Laura Bensinger
1050 Independence Blvd
Charlotte, MI
48813

Eaton County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

[REDACTED]
[REDACTED], MI
[REDACTED]