



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: August 21, 2018
MAHS Docket No.: 18-003283
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 Titles 7 and 42 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130. After due notice, a telephone hearing was held on August 16, 2018, from Lansing, Michigan. The Department was represented by Jonetta Greene, Regulation Agent of the Office of Inspector General (OIG). Respondent, Darryl Yarbrough, did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and Family Independence Program (FIP) 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 and FIP 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 [REDACTED], 2015, Respondent applied for assistance from the Department, including FAP and FIP benefits. Respondent listed on his application that he had one dependent, his son. Exhibit A, p. 13-27.

2. Respondent did not have any apparent physical or mental impairment that would limit his understanding or his ability to provide true and complete information to the Department.
3. At the time that Respondent applied for assistance on [REDACTED], 2015, Respondent did not have any dependents. Respondent was a non-custodial parent of his son who was living with his mother in California. Exhibit A, p. 34-38.
4. On April 21, 2015, the Department issued a Notice of Case Action to Respondent. The Department approved Respondent for FAP and FIP benefits based on the information he provided in his application for assistance. The Department approved Respondent for benefits based on a group size of two. Exhibit A, p. 28-31.
5. The Department issued Respondent \$4,633.99 in FIP benefits from May 2015 through April 2016, and the Department issued Respondent \$3,343.00 in FAP benefits from April 2015 through March 2016. Exhibit A, p. 76-79 and 113-114.
6. On March 8, 2017, Respondent applied for assistance from the Department again, including FAP benefits. Exhibit A, p. 39-51.
7. On March 17, 2017, the Department issued a Notice of Case Action to Respondent. The Department approved Respondent for FAP benefits based on the information he provided in his application for assistance. The Department approved Respondent for benefits based on a group size of one. The Department instructed Respondent that he was only required to report when his household income exceeded \$1,287.00 in a month. The Department instructed Respondent to report this change by the 10th of the month following the month in which his income exceeded the limit. Exhibit A, p. 52-56.
8. Respondent worked for [REDACTED] in March 2017 and received unemployment benefits. Respondent received \$1,536.41 from [REDACTED] and \$333.00 from unemployment. Respondent's total income was \$1,869.41. Exhibit A, p. 60-75.
9. Respondent did not report to the Department by April 10, 2017, that his household income exceeded \$1,287.00 in March.
10. The Department continued to issue FAP benefits to Respondent as if his household income was not exceeding \$1,287.00 per month.
11. Respondent's household income exceeded \$1,287.00 per month from March 2017 through October 2017 and from December 2017 through February 2018. Exhibit A, p. 60-75.

12. The Department issued \$1,411.00 in FAP benefits from May 2017 through February 2018. Exhibit A, p. 115-116.
13. The Department reviewed Respondent's case and discovered that Respondent falsely reported that his son was living with him when he applied for assistance in April 2015. The Department determined that it overissued \$4,633.99 in FIP benefits and \$1,119.00 in FAP benefits from April 2015 through April 2016. Exhibit A, p. 81-93.
14. The Department also discovered that Respondent failed to report that his household income exceeded his simplified reporting limit of \$1,287.00. The Department determined that it overissued \$1,311.00 in FAP benefits from May 2017 through February 2018.
15. On March 30, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
16. The OIG requested Respondent be disqualified from receiving FIP and FAP benefits for 12 months for a first IPV.
17. A notice of hearing was mailed to Respondent at his last known address and it was not returned by the United States Postal Service 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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 (May 1, 2014), 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 FIP benefits that he was entitled to receive. To be eligible for FIP benefits, a group must have a dependent child who lives with a legal parent. BEM 210 (October 1, 2014), p. 1. Respondent reported that he had a dependent, and the Department approved Respondent for FIP benefits as a result. However, Respondent did not have a dependent. Since Respondent did not have a dependent, Respondent was ineligible for FIP benefits. Thus, Respondent was not entitled to any of the \$4,633.99 in FIP benefits that the Department issued to him from May 2015 through April 2016. Therefore, Respondent was overissued \$4,633.99 in FIP benefits.

Respondent also received more FAP benefits than he was entitled to receive from April 2015 through March 2016. The Department issued FAP benefits to Respondent based on a group size of two from April 2015 through March 2016. Respondent actually only had a group size of one because he did not have a dependent. Since the Department issued FAP benefits to Respondent based on a group size of two when it should have issued them to him based on a group size of one, the Department overissued FAP benefits to Respondent. The Department presented sufficient evidence to establish that it overissued \$1,119.00 in FAP benefits from April 2015 through March 2016.

Additionally, Respondent also received more FAP benefits than he was entitled to receive from May 2017 through February 2018. The Department instructed Respondent to report to the Department if his household income exceeded \$1,287.00 per month, and Respondent failed to report to the Department when his household income exceeded the limit. This caused the Department to continue issuing FAP benefits to Respondent based on a lower income. The Department presented sufficient evidence to establish that it overissued \$1,311.00 in FAP benefits from May 2017 through February 2018.

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 (October 1, 2014) 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 completely and truthfully answer all questions on forms and in interviews. BAM 105 (April 1, 2015), p. 8. The Department clearly and correctly instructed Respondent to provide true and complete information on his application. Respondent failed to completely and truthfully answer all questions on his application for assistance. In the application, Respondent reported that he had one dependent when he did not actually have any dependents. Respondent intentionally misrepresented information to the Department and he knew or should have known that the Department would consider the information in determining his eligibility for benefits. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to provide true and complete information.

Further, Respondent failed to report that his household income exceeded his reporting limit after the Department instructed him to. Respondent was required to report that his household's monthly gross income exceeded his 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 his household's monthly gross income exceeded his simplified reporting limit of \$1,287.00. Respondent's household's monthly gross income first exceeded his simplified reporting limit in March 2017, and Respondent failed to report it as instructed. 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 a reduction in his FAP benefits. The Department established that 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, 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 prior IPV disqualification from a program is not counted later when determining the disqualification period for an IPV in a different program. BAM 720, p. 20. 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 or FIP benefits. Thus, this is Respondent's first IPV related to FAP and FIP benefits. Therefore, Respondent is subject to a one-year disqualification for each program.

DECISION AND ORDER

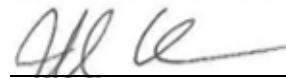
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of \$2,430.00 in FAP and \$4,633.99 in FIP benefits that the Department is entitled to recoup.
2. The Department has established, by clear and convincing evidence, that Respondent committed an IPV related to his FAP and FIP benefits.
3. Respondent should be disqualified from receiving benefits.

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$2,430.00 in FAP and \$4,633.99 in FIP benefits in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall be disqualified from FAP and FIP benefits for 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

Lori Duda
30755 Montpelier Drive
Madison Heights, MI
48071

Oakland 2 County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
PO Box 30062
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Respondent


, MI