



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: August 15, 2018
MAHS Docket No.: 18-003430
Agency No.: [REDACTED]
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 August 14, 2018, from Lansing, Michigan. The Department was represented by Scott Matwiejczyk, 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, 112 pages of documents were offered and admitted as Department's Exhibit A, pages 1-112.

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 [REDACTED], 2016, Respondent applied for assistance from the Department, including FAP benefits. Exhibit A, pages 40-68.

2. On the application, Respondent indicated that he was the only person in his home located at [REDACTED], MI [REDACTED]. Exhibit A, page 42-45.
3. On the application, Respondent certified that all information he provided was truthful and acknowledged his duty to report any changes to his group size within 10 days of the change. Exhibit A, pages 20-21.
4. The application further informed Respondent that if he intentionally misrepresented facts or 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, page 50-51.
5. On August 30, 2016, [REDACTED] applied for assistance from the Department, including FAP benefits. Exhibit A, pages 69-88.
6. On the application, [REDACTED] indicated that she was one of two people, the other being her infant child, living in her home located at [REDACTED] MI [REDACTED]. Exhibit A, pages 71-74.
7. In the section titled "Absent Parent Information," Respondent indicated that the father of her infant child was Respondent, [REDACTED], and that Respondent was not in the home. Exhibit A, page 74.
8. Respondent and [REDACTED] were living together at [REDACTED] Michigan at the time Respondent filled out his application for benefits on [REDACTED], 2016.
9. In November 2016, Respondent began working for [REDACTED] and continued to work there through at least March of 2017. Exhibit A, pages 102-105.
10. From the time Respondent applied for benefits through at least the end of March of 2017, Respondent never reported any income from [REDACTED] to the Department.
11. Based on Respondent's failure to inform the Department of his income and misrepresentations regarding the members of his household, the Department issued Respondent FAP benefits based on a group of one without taking into consideration his actual but unreported income. Exhibit A, page 106.
12. The Department's OIG filed a hearing request on March 29, 2018, to establish an OI of FAP benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, page 1-2.
13. This is Respondent's first alleged IPV, and the OIG has requested that Respondent be disqualified from receiving FAP benefits for a period of one year. Exhibit A, page 1.

14. The OIG considers the fraud period to be January 1, 2017, through February 28, 2017. Exhibit A, pages 1-4.
15. During the alleged fraud period, Respondent was issued \$2,073.00 in FAP benefits. Exhibit A, pages 3, 106-112.
16. During the alleged fraud period, Respondent was only entitled to FAP benefits of \$1,555.00. Exhibit A, pages 3, 106-112.
17. The Department alleges that Respondent received an OI of FAP benefits in the amount of \$518.00. Exhibit A, pages 3, 106-112.
18. Respondent did not have any apparent mental physical impairment that would limit his understanding or ability to fulfill his reporting requirement.
19. 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 (May 1, 2014), 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 [REDACTED], which caused Respondent's income to be understated. Respondent's unreported income reduces the amount of FAP benefits that Respondent was eligible to receive. Furthermore, the Department issued Respondent benefits based on a group size of one despite Respondent living in a home with the mother of his child and their common children. When factoring in all of the group members and the relevant information, it is clear that Respondent was given an

overissuance of FAP benefits. To calculate the overissuance, the Department corrected the group by including all group members in a single group and factoring in the appropriate income. During the hearing, the Department presented sufficient evidence to establish that Respondent was overissued \$518.00 of FAP benefits from January 1, 2017, through February 28, 2017.

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 her 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 of receiving the first paycheck. Respondent received his first paycheck on or about November 28, 2016. However, he failed to report that he was employed or had any income at any point in time despite continuously working and receiving paychecks from November of 2016 through at least sometime in March of 2017.

Additionally, Respondent was required to completely and truthfully answer all questions in forms and in interviews. BAM 105, page 9. On [REDACTED], 2016, Respondent submitted an application for FAP benefits and certified that he was the only person living in the household. Just two weeks before that, however, the mother of Respondent's children, [REDACTED], also filled out an application for benefits from the Department and listed a substantially similar address, which they in fact shared together. Both Respondent and [REDACTED] dishonestly filled out those applications by misrepresenting the fact that they lived together. Thus, Respondent not only failed to timely report the change in income, he affirmatively misrepresented his household status when applying for benefits from the Department.

Respondent's failure to report the income 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 the conclusion that Respondent was engaged in a fraudulent course of conduct to increase his benefit allotment is the fact that both he and [REDACTED] apparently coordinated their answers in an attempt to deceive the Department into thinking they had separate households. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his requirements to the Department. The Department has proven by clear and convincing evidence that Respondent committed an intentional program violation.

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 standard 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 \$518.00 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 \$518.00 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

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

Kimberly Kornoelje
121 Franklin SE
Grand Rapids, MI 49507

Kent County, 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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