



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: September 24, 2018
MAHS Docket No.: 18-003577
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [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 September 20, 2018, from Lansing, Michigan. The Department was represented by Jenna McClellan, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] [REDACTED] 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) 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 FAP?

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], 2014, Respondent applied for assistance from the Department, including FAP benefits. In the application, Respondent stated that her child, [REDACTED] lived with her at [REDACTED] in [REDACTED]. The application instructed Respondent to report anyone moving in or out of her residence to the Department within 10 days of the date of the change. Respondent signed the application. Exhibit A, p. 10-42.

2. Respondent did not have any apparent physical or mental impairment which would have limited her understanding or ability to fulfill her responsibilities to the Department.
3. In June 2015, the school record for Respondent's child, [REDACTED] indicated that the child lived with his father and step-mother at [REDACTED] in [REDACTED] [REDACTED] Exhibit A, p. 57-59.
4. On July 15, 2015, Respondent and her husband obtained a divorce judgment. The judgment awarded Respondent and her ex-husband joint legal and physical custody of their children. The judgment stated, "[Respondent's ex-husband] shall be awarded the primary residence of the minor child for school purposes." Exhibit A, p. 49-56.
5. Respondent did not report to the Department that her child, [REDACTED] was no longer living in her residence.
6. The Department continued to issue FAP benefits to Respondent based on a budget that included [REDACTED] as a group member. The Department issued Respondent \$7,906.00 in FAP benefits from August 2015 through December 2016. Exhibit A, p. 60-62.
7. The Department investigated Respondent's case and determined that it overissued FAP benefits to Respondent because [REDACTED] moved out and Respondent did not report it to the Department.
8. On April 4, 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.
9. The OIG requested recoupment of a \$2,618.00 overissuance of FAP benefits issued from August 2015 through December 2016, and the OIG requested that Respondent be disqualified from receiving program benefits for 12 months for a first IPV.
10. A notice of hearing was mailed to Respondent at her last known address and it was not returned by the United States Postal Service as undeliverable.

CONCLUSIONS OF LAW

The Supplemental Nutrition Assistance Program (SNAP) is a federal food assistance program designed to promote general welfare and to safeguard well-being by increasing food purchasing power. 7 USC 2011 and 7 CFR 271.1. The Department administers its Food Assistance Program (FAP) pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015. Department policies

are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Overissuance

A recipient claim is an amount owed because of benefits that were overpaid or benefits that were trafficked. 7 CFR 273.18(a)(1). When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (January 1, 2018), p. 1.

In this case, Respondent received more benefits than she was entitled to receive. FAP benefits are provided to households rather than individuals. 7 USC 2013(a). Here, the Department issued FAP benefits to Respondent based on a household group of three, including [REDACTED]. [REDACTED] was not living with Petitioner according to the divorce judgment and school records. Since [REDACTED] was not actually living with Respondent, he should not have been included as a member of her household group.

The Department should have issued FAP benefits to Respondent based on a household group of only two. The reduction of one household group member decreases the FAP benefit amount the household is eligible for. When the Department included too many household group members, it overissued FAP benefits to Petitioner. The Department presented sufficient evidence to establish that it overissued \$2,618.00 in FAP benefits to Respondent from August 2015 through December 2016.

Intentional Program Violation

An intentional program violation (IPV) “shall consist of having intentionally: (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards.” 7 CFR 273.16(c). 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. 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 changes in her circumstances to the Department within 10 days of the change. 7 CFR 273.12(a)(2). The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent failed to report that her child, [REDACTED] moved out of her residence within 10 days of the date he moved. Respondent did not provide any explanation for her inaction. Therefore, 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

In general, individuals found to have committed an intentional Program violation through an administrative disqualification hearing shall be ineligible to participate in the Program: (i) for a period of 12 months for the first violation, (ii) for a period of 24 months for the second violation, and (iii) permanently for a third violation. 7 CFR 273.16(b). Only the individual who committed the violation shall be disqualified – not the entire household. 7 CFR 273.16(b)(11).

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 12-month 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 \$2,618.00 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 FAP.

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$2,618.00 in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall be disqualified from FAP for a period of 12 months.

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

Denise McCoggle
27260 Plymouth Rd
Redford, MI
48239

Wayne 55 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]