



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.: 18-003581
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 20, 2018, from Lansing, Michigan. The Department was represented by Joseph Gregurek, Regulation Agent of the Office of Inspector General (OIG). Respondent, [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 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. As of October 23, 2014, Respondent was responsible for paying \$46.00 for her rent. The remainder of her rent (\$480.00) was paid by MSHDA. Exhibit A, p. 123.
2. As of November 1, 2015, Respondent was responsible for paying \$57.00 for her rent. The remainder of her rent (\$480.00) was paid by MSHDA. Exhibit A, p. 123.

3. On July 14, 2015, the Department issued a Redetermination to Respondent at [REDACTED] in [REDACTED] to obtain information from Respondent to review her eligibility for FAP benefits. Exhibit A, p. 57-62.
4. On July 31, 2015, Respondent returned her completed Redetermination to the Department. Respondent reported that she did not have any changes in her housing expenses. Exhibit A, p. 57-62.
5. As of November 1, 2016, Respondent was responsible for paying \$29.00 for her rent. The remainder of her rent (\$480.00) was paid by MSHDA. Exhibit A, p. 123.
6. On July 11, 2016, the Department issued a Redetermination to Respondent at [REDACTED] in [REDACTED] to obtain information from Respondent to review her eligibility for FAP benefits. Exhibit A, p. 88-93.
7. On August 2, 2016, Respondent returned her completed Redetermination to the Department. Respondent reported that she did not have any changes in her housing expenses. Exhibit A, p. 88-93.
8. From December 2014 to April 2017, the Department issued \$24,933.00 in FAP benefits to Respondent. Exhibit A, p. 125-129.
9. The Department reviewed Respondent's case and determined that it incorrectly budgeted her FAP benefits because it included a rent expense that was paid by MSHDA and the additional expense increased the amount of FAP benefits she was found eligible for.
10. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her requirements to the Department.
11. 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.
12. The OIG requested recoupment of a \$2,345.00 overissuance of FAP benefits issued from December 2014 through April 2017, and the OIG requested that Respondent be disqualified from receiving program benefits for 12 months for a first IPV.
13. 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

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 entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1. In this case, the Department alleged Respondent was overissued \$2,345.00 in FAP benefits from December 2014 through April 2017, but the Department did not present sufficient evidence to establish that Respondent was overissued FAP benefits in the amount alleged. The evidence established that Respondent was only overissued \$1,878.00 in FAP benefits.

The Department did not consider the amount of rent Respondent was responsible for when the Department budgeted Respondent's FAP benefits. The Department properly removed the rent that MSHDA paid for Respondent because it was not Respondent's responsibility. However, Respondent was responsible for a small portion of her rent and the Department did not include it when it budgeted Respondent's FAP benefits. This caused the Department to understate Respondent's shelter expense, which overstated her overissuance.

Additionally, the Department changed Respondent's group size from five to four for the month of August 2015. The Department did not present any evidence to establish that Respondent's group size should have been changed, so the Department should have kept it the same. When the Department reduced Respondent's group size, it increased her overissuance.

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 not met its burden. The Department did not present sufficient evidence to establish that Respondent intentionally withheld or misrepresented information for the purpose of maintaining, increasing, or preventing reduction of her FAP benefits.

The Department presented numerous SER applications, but those applications were only regarding the SER program and the SER program was not the program at issue. Thus, the SER applications were irrelevant.

The Department did not present any evidence of the rent expense Respondent reported on her application for FAP benefits. Although the Department presented Redeterminations with questions about housing expenses, the Redeterminations were irrelevant without evidence of what Respondent had reported as her rent expense on her application(s) for FAP benefits. Had the Department presented evidence that Respondent misrepresented information on her application(s) for FAP benefits, then the Department would have established that Respondent committed an IPV.

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, Respondent is not disqualified from receiving FAP benefits because there is no evidence she committed an IPV.

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 \$1,878.00 that the Department is entitled to recoup.
2. The Department has not established, by clear and convincing evidence, that Respondent committed an IPV.
3. Respondent should not be disqualified from receiving FAP benefits.

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$1,878.00 in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall not be disqualified from FAP benefits.

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

Lynne Greening
2700 Baker Street
PO Box 4290
Muskegon Heights, MI
49444

Muskegon 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]
MI