



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

Date Mailed: October 15, 2018
MAHS Docket No.: 18-004117
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 October 11, 2018, from Lansing, Michigan. The Department was represented by Dawn O'Dell, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] appeared and represented himself.

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 FAP from the Department. In his application, Respondent asserted that he was unemployed. The Department instructed Respondent to report all changes which could affect his eligibility for FAP to the Department within 10 days of the date of the change, including changes in employment and income. Respondent signed his application and thereby acknowledged that he understood his reporting responsibility. Exhibit A, p. 12-40.

2. Respondent did not have any impairment which would have limited his understanding or his ability to fulfill his responsibilities to the Department.
3. On October 30, 2014, Respondent began employment at [REDACTED]. Exhibit A, p. 73.
4. On December 30, 2014, [REDACTED] issued a payroll remittance to Respondent for the gross amount of \$[REDACTED]. Respondent's year-to-date gross income shown on his payroll remittance was \$[REDACTED]. Exhibit A, p. 87.
5. On April 9, 2015, Respondent's employment at Subway came to an end. Exhibit A, p. 73.
6. On April 21, 2015, [REDACTED] issued a payroll remittance to Respondent for the gross amount of \$[REDACTED]. Respondent's year-to-date gross income shown on his payroll remittance was \$[REDACTED]. Exhibit A, p. 88.
7. The Department issued Respondent a FAP benefit of \$194.00 per month for each month from October 2014 through April 2015 based on a group size of 1 and a countable income of \$0.00. Exhibit A, p. 89.
8. On June 27, 2016, Respondent applied for FAP from the Department. In his application, Respondent asserted that he was unemployed. The Department instructed Respondent to report all changes which could affect his eligibility for FAP to the Department within 10 days of the date of the change, including changes in employment and income. Respondent signed his application and thereby acknowledged that he understood his reporting responsibility. Exhibit A, p. 41-68.
9. From July 1, 2016, through September 30, 2016, Respondent earned \$[REDACTED] from employment at [REDACTED]. Exhibit A, p. 69.
10. From October 1, 2016, through December 31, 2016, Respondent earned \$[REDACTED] from employment at [REDACTED]. Exhibit A, p. 69.
11. The Department issued Respondent a FAP benefit of \$194.00 per month for each month from August 2016 through November 2016 based on a group size of 1 and a countable income of \$0.00. Exhibit A, p. 89.
12. The Department investigated Respondent's case and determined that it overissued Respondent FAP benefits because he had unreported income.
13. On April 18, 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.

14. The OIG requested recoupment of \$684.00 for FAP benefits issued from December 2014 through April 2015 and \$712.00 for FAP benefits issued from August 2016 through November 2016.

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 he was entitled to receive because he had unreported income. FAP benefits are income-based, so the amount of income a household has determines the household's FAP benefit. Here, the Department overissued FAP benefits to Respondent because the Department issued FAP benefits to Respondent based on an income of \$0.00 when Respondent had a greater income which reduced his household's FAP benefit amount.

The Department alleged that Respondent was overissued \$684.00 from December 2014 through April 2015, but the Department did not present sufficient evidence to prove its alleged overissuance. The Department's only evidence of Respondent's wages during this time period was two paycheck stubs from Subway. One of the checks was dated December 30, 2014, which provided an accurate record of his earnings from October 2014 through December 2014. The Department divided the earnings from this check by three to get his earnings for December 2014, which I find is sufficient evidence of his earnings for that month (since his employment began October 2014). The other paycheck was dated April 21, 2015, which did not provide an accurate record of his earnings because it was not dated at the end of a quarter and the Department did not otherwise explain how it calculated his monthly earnings. Thus, I must find that the Department did not present sufficient evidence to establish Respondent's earnings from January 2015 through April 2015. Therefore, the Department only established that Respondent was overissued FAP benefits for December 2014. The overissuance for December 2014 was \$150.00.

The Department also alleged that Respondent was overissued \$712.00 from August 2016 through November 2016, and the Department did present sufficient evidence to

prove its alleged overissuance. The Department presented a record of Respondent's quarterly wages from [REDACTED], and the Department divided the quarterly wages by three to get Respondent's monthly income. The Department's methodology accurately calculated Respondent's monthly income, and Respondent did not dispute the Department's calculation. Thus, the Department presented sufficient evidence to establish that it overissued Respondent \$712.00 from August 2016 through November 2016.

In summary, Respondent received a total overissuance of \$862.00.

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 his 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, including changes in employment and income. Respondent failed to report that he obtained employment or that his income increased. Although Respondent denied that he failed to report his employment, I do not find Respondent's testimony to be reliable because it lacked specificity and corroborating evidence. Respondent's failure to report the change in his employment and income 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. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his 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 from FAP.

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 \$862.00 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 \$862.00 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

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Oakland 4 County DHHS- via electronic
mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

DHHS

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Respondent

[REDACTED]
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[REDACTED], MI
[REDACTED]