



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: August 13, 2018

MAHS Docket No.: 18-004290

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 9, 2018, from Lansing, Michigan. The Department was represented by Gary Shuk, 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 the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from receiving Food Assistance Program (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] 2012, Respondent applied for assistance from the Department, including FAP benefits. In the application Respondent submitted, Respondent reported that she was receiving employment income from Old Navy. Exhibit A, p. 11-30.
2. In the application Respondent submitted on [REDACTED], 2012, Respondent acknowledged receipt of an information booklet containing Things You Must Do and Important Things to Know, which instructed Respondent to report all changes

which could affect her eligibility for assistance to the Department within 10 days of the date of the change. Exhibit A, p. 30.

3. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her responsibilities to the Department.
4. On September 28, 2012, Respondent obtained employment at [REDACTED]. [REDACTED] issued Respondent her first payroll remittance on October 11, 2012. Respondent remained employed by [REDACTED] through April 2013. Exhibit A, p. 44-46.
5. Respondent did not report to the Department that she began employment at [REDACTED].
6. On October 27, 2012, Respondent obtained employment at [REDACTED]. [REDACTED] issued Respondent her first payroll remittance on November 2, 2012. Respondent remained employed by [REDACTED] through November 2012. Exhibit A, p. 47-50.
7. Respondent did not report to the Department that she began employment at DavisSmith.
8. The Department continued to issue FAP benefits to Respondent as if she did not have a change in circumstances.
9. The Department subsequently discovered that Respondent had unreported employment.
10. The Department conducted an investigation of Respondent's case and determined that it overissued her FAP benefits due to her unreported employment income.
11. The Department established an overissuance of \$1,497.00 due to a client error.
12. On April 20, 2018, the Department's OIG filed a hearing request to establish that Respondent committed an IPV. Exhibit A, p. 1.
13. The OIG requested Respondent be disqualified from receiving program benefits for 12 months for a first IPV.

CONCLUSIONS OF LAW

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).

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.

Intentional Program Violation

Respondent received an overissuance of FAP benefits due to unreported employment income. The Department has already established a debt for the overissuance based on a client error. The issue here is whether the overissuance was due to an 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 (August 1, 2012) 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 report changes in her circumstances to the Department within 10 days of the date of the change. BAM 105 (May 1, 2012), p. 7. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent failed to report that she obtained employment at [REDACTED] and [REDACTED] within 10 days of the date she received her first payroll remittance from each employer. Respondent did not provide any explanation for her failure to report her employment to the Department. Respondent's failure to report her employment 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. The Department established that Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her 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. 12. 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. 13. 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. 12.

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.

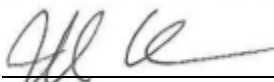
DECISION AND ORDER

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. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.
2. Respondent should be disqualified from receiving FAP benefits.

IT IS ORDERED THAT Respondent shall be disqualified from FAP benefits for a period of 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

Lindsay Miller
125 E. Union St 7th Floor
Flint, MI
48502

Genesee Union St. 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
[REDACTED]