



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: October 15, 2018
MAHS Docket No.: 18-005275
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 Stephanie Picca, 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 the Food Assistance Program (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 November 3, 2014, Respondent and her husband entered into a one-year lease for the occupancy of a residential property at [REDACTED] in [REDACTED] Exhibit A, p. 40.
2. On [REDACTED], 2015, Respondent applied for FAP benefits from the Department. In Respondent's application, Respondent asserted that she was separated from her husband and that he was not a member of her household. Exhibit A, p. 10-31.

3. On February 1, 2016, the Department issued a Semi-Annual Contact Report to Respondent to obtain information from her to review her eligibility for FAP. Respondent completed the report and indicated that her husband was not living in her household. Exhibit A, p. 32-33.
4. On August 15, 2016, the Department issued a Redetermination to Respondent to obtain information from her to review her eligibility for FAP. Respondent completed the report and indicated that her husband was not living in her household. Exhibit A, p. 34-39.
5. Respondent's husband was employed at [REDACTED] from March 2014 through September 2016. Respondent's husband's most recent salary was \$ [REDACTED] per year. Exhibit A, p. 47-48
6. As of September 2016, Respondent's husband had a deduction of \$4.11 from his paycheck for "Vol Life Spouse," his taxable status was listed as "married," and his address was listed as [REDACTED] in [REDACTED] Exhibit A, p. 49.
7. The Department issued Respondent a FAP benefit of \$329.00 for October 2015 and a FAP benefit of \$511.00 each month from November 2015 through September 2016. The Department issued these FAP benefits to Respondent based on a household that excluded Respondent's husband and had a countable income of \$0.00. Exhibit A, p. 79-80.
8. The Department investigated Respondent's case and determined that it overissued benefits to Respondent because Respondent's household had an unreported group member (Respondent's husband) with countable income.
9. On April 4, 2017, the Department attempted to contact Respondent to get an explanation from her, but Respondent did not respond to the Department's attempt.
10. On May 8, 2018, the Department's OIG filed a hearing request to establish that Respondent committed an IPV. The Department is not seeking the recoupment of an overissuance because Respondent filed for bankruptcy relief. Exhibit A, p. 1.
11. The Department requested that Respondent be disqualified from FAP for 12 months for a first IPV.
12. 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).

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 not met its burden. The Department did not present sufficient evidence to establish that Respondent had an unreported group member with countable income. The Department asserted that Respondent’s husband was working and that he was living with Respondent, so he must be considered a member of Respondent’s group and his income must be budgeted for Respondent’s FAP. The Department established that Respondent was married and that her husband had income, but the Department did not present sufficient evidence to establish that Respondent’s husband was living with Respondent during the time that Respondent received FAP benefits from the Department.

The Department only presented paycheck stubs showing Respondent’s husband used Respondent’s home address for his employment and a lease signed by Respondent and her husband. These pieces of evidence do not establish that Respondent’s husband was living together with Respondent during the time that the Department issued Respondent FAP benefits. The Department also presented a note which documented that Respondent’s landlord asserted Respondent’s husband was living with Respondent. The note is hearsay and unreliable evidence, so it cannot be considered as evidence to establish that Department’s assertion that Respondent’s husband was living with Respondent.

Since the Department did not establish that Respondent had an unreported group member with countable income, the Department cannot establish that Respondent withheld or misrepresented information regarding this group member to obtain FAP benefits. Therefore, an IPV has not been established.

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 committed an IPV, so Respondent is not subject to a 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 not established, by clear and convincing evidence, that Respondent committed an IPV.
2. Respondent should not be disqualified from FAP.

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

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

Hillsdale County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

DHHS

Traci Croff
40 Care Drive
Hillsdale, MI
49242

Respondent

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