



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: September 7, 2018
MAHS Docket No.: 18-005821
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 Titles 7 and 42 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16 and 42 CFR 431.230(b). After due notice, a telephone hearing was held on September 6, 2018, from Lansing, Michigan. The Department was represented by Dana Mikko, Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e). During the hearing, 30 pages of documents were offered and admitted as Department's Exhibit A, pages 1-30.

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 November 12, 2013, the Department issued a Redetermination, Form 1010, to Respondent to obtain relevant ongoing eligibility information from Respondent. Exhibit A, pp. 10-13.

2. On December 5, 2013, Respondent returned the completed Redetermination to the Department and certified that all information contained within the document was accurate. Exhibit A, pp. 10-13.
3. On the returned Redetermination, Respondent indicated that she had three people living in her home and was on maternity leave from [REDACTED] that started November 21, 2013, with an intended return to work date of January of 2014. Exhibit A, pp. 11-13.
4. On June 4, 2013, the Department sent Respondent a Notice of Case Action informing Respondent that she was eligible for \$367 per month in FAP benefits. Exhibit A, pp. 15-20.
5. The Notice of Case Action informed Respondent that she was a simplified reporting client and that "the only change you are required to report for the Food Assistance program is: WHEN YOUR HOUSEHOLD INCOME EXCEEDS THE LIMIT LISTED BELOW," which was \$1,640. Exhibit A, pp. 15-20.
6. The Notice of Case Action also further informed Respondent of her duties to report changes in circumstances that could impact her eligibility for FAP benefits. Specifically, Petitioner was given the following instruction:

"If you receive benefits for...food assistance program...it is your responsibility...to notify this office within 10 days of any changes in your circumstances which may affect your eligibility for assistance. This includes changes in employment, income...for you or members of your family.... Failure to report changes may make you liable to penalties provided by law for fraud."

Exhibit A, p. 20.

7. On or about January 4, 2015, Respondent began working for [REDACTED], Inc. Exhibit A, pp. 23-25.
8. During the months of October of 2014 and December of 2014, Respondent's income exceeded the monthly simplified reporting limit. Exhibit A, pp. 23-25.
9. Respondent did not report to the Department either her employment with [REDACTED], Inc. or the fact that she exceeded the simplified reporting limit for the two months referenced above.
10. In October of 2014 and December of 2014, the Department issued Respondent a total of \$944 of FAP benefits based on her simplified reporting income estimates. Exhibit A, pp. 26-30.
11. On June 8, 2018, the Department's OIG filed a hearing request to establish an IPV.

12. The Department's OIG requested that Respondent be disqualified from receiving FAP benefits for two years for a second alleged IPV. Exhibit A, p. 22.
13. The Department considers the alleged fraud period to be from October 1, 2014, through December 31, 2014. Exhibit A, pp. 1-8.
14. During the alleged fraud period, the Department alleges that Respondent was issued \$944 of FAP benefits, and the Department believes Respondent was not entitled to any FAP benefits during that time period. Exhibit A, pp. 4.
15. The Department is not seeking to establish an overissuance as the Department considers the debt to have already been established. Exhibit A, p. 4.
16. Respondent did not have any apparent mental or physical impairment that would limit her understanding or ability to fulfill her reporting requirements.

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.

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; (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 (October 1, 2014) 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, Respondent was a simplified reporter. Simplified reporting clients must report going over the applicable simplified reporting threshold in any month within the first 10 days of the following month, which in this case was \$1,640. BAM 200 (December 1, 2013) p. 1; RFT 250 (October 1, 2014), p. 1. The Department informed Respondent of the requirement, yet Respondent failed to report going over the threshold within the first 10 days of either of the two months after she went over the limit.

However, the Department did not present sufficient evidence to establish by clear and convincing evidence that Respondent committed an IPV. Rather, it appears that Respondent's failure to report the additional income was simply a case of negligence. As Respondent was a simplified reporter, reporting changes, including changes to income, was not something that she normally had to concern herself with. Her failure to do so and keep track of the total income is more appropriately viewed as an error of omission. Though Respondent failed to follow the instructions by failing to affirmatively report her income within ten days of the end of the months of either October of 2014 or December of 2014, the Department failed to show by clear and convincing evidence that such failure was intentional. Thus, the Department did not meet its burden of proof.

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, page 15. 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, page 16.

In this case, there was no IPV. Therefore, Respondent is not subject to a disqualification from receiving FAP benefits.

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 receiving FAP benefits.

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

JM/dh



John Markey
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

Kimberly Reed
609 North State Street
PO Box 278
Stanton, MI 48888

Montcalm County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

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Respondent

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