



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: August 15, 2018
MAHS Docket No.: 18-006572
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 Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on August 14, 2018, from Lansing, Michigan. The Department was represented by Scott Matwiejczyk, 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, 35 pages of documents were offered and admitted as Department's Exhibit A, pages 1-35.

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 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 June 13, 2016, the Department issued a Redetermination, Form 1010, to Respondent to obtain relevant ongoing eligibility information from Respondent. Exhibit A, pages 10-15.

2. On June 23, 2016, Respondent returned the completed Redetermination to the Department and certified that all information contained within the document was accurate. Exhibit A, pages 10-15.
3. On the returned Redetermination, Respondent indicated that she had no income after ending a job with [REDACTED] on June 17, 2016. Exhibit A, page 13.
4. On or about July 14, 2016, Respondent began working for [REDACTED] and worked there through at least June 2017. Exhibit A, pages 16-19.
5. Respondent did not report her employment with [REDACTED] to the Department.
6. From September 1, 2016, through March 31, 2017, the Department issued Respondent \$541.00 of FAP benefits per month based on a reported income of zero. Exhibit A, pages 20-35.
7. On June 20, 2018, the Department's OIG filed a hearing request to establish an IPV.
8. The Department's OIG requested that Respondent be disqualified from receiving FAP benefits for one year for a first alleged IPV.
9. The Department considers the alleged fraud period to be from September 1, 2016, through March 31, 2017. Exhibit A, pages 1-4.
10. During the alleged fraud period, Respondent was issued \$3,066.00 of FAP benefits, and the Department believes Respondent was only entitled to \$691.00 during that time period. Exhibit A, page 3.
11. The Department is not seeking a finding of an overissuance as the debt has already been established.
12. 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 (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)). Clients must report obtaining new employment that potentially affects eligibility or benefit amount within 10 days of receiving the first paycheck. BAM 105 (April 1, 2016) p. 11-12.

In this case, the Department has not met its burden. The Department did not present sufficient evidence to establish by clear and convincing evidence that Respondent committed an IPV. First, the Department did not present sufficient evidence to establish it clearly and correctly instructed Respondent regarding her reporting responsibilities. On the Redetermination submitted June 23, 2016, Respondent did acknowledge that the information contained within the form was accurate and complete. The Department's position in this case, however, is not that Respondent misrepresented any facts on that form. Rather, the Department's position is that Respondent intentionally violated the program by failing to report the changes to her employment status in a timely manner. The instructions and warnings contained in the Redetermination document are silent with respect to any continuing reporting requirements. It is impossible to find on this record that Respondent was clearly and correctly instructed regarding her reporting requirements. Because clear and correct instructions are a condition to finding an IPV, the failure to prove they were given is fatal to an allegation of 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, 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 Kornoelje
121 Franklin SE
Grand Rapids, MI 49507

Kent County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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