



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED] MI [REDACTED]

Date Mailed: October 4, 2018
MAHS Docket No.: 18-006585
Agency No.: [REDACTED]
Respondent: 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 Titles 7 and 42 of the Code of Federal Regulations (CFR), particularly 7 CFR 273.16 and 42 CFR 431.230(b), and with Mich Admin Code, R 400.3130. After due notice, a telephone hearing was held on October 4, 2018, from Lansing, Michigan. The Department was represented by Monica Williams, Lead 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) and Mich Admin Code R 400.3130(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of Family Independence Program (FIP) and 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 FIP and 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], 2016, Respondent applied for FIP assistance from the Department. In the application Respondent submitted, the Department 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. The Department specifically identified

the types of changes that must be reported, including “unearned income starts or stops (like . . . unemployment benefits . . .).” Exhibit A, p. 18-36.

2. On May 31, 2016, Respondent filed a claim for unemployment benefits. Exhibit A, p. 37.
3. On June 1, 2016, Respondent applied for FAP assistance. Exhibit A, p. 11-17.
4. On June 18, 2016, the Unemployment Insurance Agency issued Respondent \$592.00 for unemployment benefits. Exhibit A, p. 38.
5. Respondent did not report her income from unemployment to the Department.
6. The Department issued FIP and FAP benefits to Respondent without taking into consideration her income from unemployment.
7. The Department investigated Respondent’s case and discovered that she had unreported income which caused the Department to overissue her FIP and FAP benefits.
8. The Department scheduled an interview with Respondent for May 10, 2018, but Respondent did not appear at the interview or otherwise contact the Department.
9. On June 25, 2018, the Department’s OIG filed a hearing request to establish that Respondent received an overissuance of FIP and FAP benefits and that Respondent committed an IPV. Exhibit A, p. 1.
10. The OIG requested recoupment of \$1,467.00 of FIP benefits and a \$917.00 of FAP benefits overissued from August 2016 through October 2016. The OIG requested that Respondent be disqualified from FIP and FAP for 12 months for a first IPV.
11. A notice of hearing was mailed to Respondent at his last known address and it was not returned by the United States Postal Service as undeliverable.

CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (January 1, 2018), p. 1. When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1. In this case, Respondent received more benefits than she was entitled to receive. Respondent failed to report her income from unemployment to the Department, so the Department did not budget her income when it calculated the benefits she was eligible for. This resulted in the Department issuing more FIP and FAP benefits to Respondent than she was entitled to receive.

The Department presented sufficient evidence to establish that Respondent was overissued \$1,467.00 in FIP benefits from August 2016 through October 2016. A group is only eligible for FIP when the group has a financial need as determined by a deficit test that subtracts the group's income from the FIP payment standard. BEM 518 (October 1, 2015), p. 1. In 2016, the payment standard was \$492.00. RFT 210 (December 1, 2013). Respondent's unemployment income exceeded \$492.00 each month from August 2016 through October 2016, so Respondent's group did not have a deficit. Since Respondent did not have a deficit, she did not have a financial need and was ineligible for FIP. Thus, all FIP benefits issued to Respondent from August 2016 through October 2016 were overissued. Respondent was issued \$1,467.00 in FIP benefits from August 2016 through October 2016, so she owes the Department \$1,467.00.

The Department alleged that Respondent was overissued \$917.00 in FAP benefits, but the Department's evidence did not support the amount of its alleged overissuance. The only unreported income the Department alleged that Respondent had was her unemployment income. However, when the Department calculated its overissuance amount, the Department calculated Respondent's overissuance based on her unreported unemployment income and an additional amount of \$492.00 per month.

It appears that the additional amount of \$492.00 per month was the FIP benefit that was issued to Respondent each month, which the Department is now claiming was also overissued and should be recouped in its entirety. The Department has alleged both that Respondent had income of \$492.00 per month from FIP and that Respondent owes the Department \$492.00 for each of the same months for FIP that was overissued. The Department's allegations are inconsistent, and they have resulted in an overissuance calculation that is unfair. Since the Department has alleged that Respondent was not entitled to the \$492.00 FIP benefit she received each month from August 2016 through

October 2016, the Department should not have considered it as income when calculating her FAP overissuance. When the FIP benefit is excluded from the FAP overissuance calculation, the FAP overissuance is only \$475.00. Respondent was overissued \$475.00 in FAP benefits, so that is the amount she owes the Department.

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 (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)).

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 (April 1, 2016), p. 11. The Department specifically advised Respondent to report if she had a start or stop in unemployment income. Respondent failed to report her unemployment income to the Department within 10 days. Respondent's failure to report this change to the Department must be considered an intentional misrepresentation to maintain her FIP and 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 benefits. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill his 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. 15-16. 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. 16. 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. 16.

In this case, there is no evidence that Respondent has ever been found to have committed an IPV related to FIP or FAP benefits. Thus, this is Respondent's first IPV related to both. Therefore, Respondent is subject to a 12-month disqualification from each program.

DECISION AND ORDER

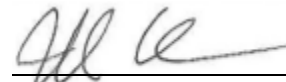
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of \$1,467.00 in FIP and \$475.00 in FAP benefits that the Department is entitled to recoup.
2. The Department has established, by clear and convincing evidence, that Respondent committed an IPV related to her FIP and FAP benefits.
3. Respondent should be disqualified from FIP and FAP.

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$1,467.00 in FIP and \$475.00 in FAP benefits in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall be disqualified from FIP and FAP for 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

Respondent

OIG
PO Box 30062
Lansing, MI
48909-7562

Oakland 3 County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

DHHS

Randa Chenault
25620 W. 8 Mile Rd
Southfield, MI
48033

Respondent

[REDACTED]
MI