



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.: 18-006605
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, 116 pages of documents were offered and admitted as Department's Exhibit A, pages 1-116.

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 [REDACTED], 2016, Respondent applied for assistance from the Department. Exhibit A, page 10-45.
2. On the application, Respondent indicated that she was not employed. Exhibit A, page 20.

3. On the application, Respondent acknowledged her duty to report starting employment within ten days of receiving her first paycheck. Exhibit A, pages 26-27.
4. The application further informed Respondent that if she intentionally failed to report a change in circumstances and received benefits to which she was not entitled, she could be disqualified from the programs and be required to pay back any benefits wrongfully received. Exhibit A, page 27.
5. On or about January 23, 2017, Respondent began working for [REDACTED] and continued to work there until at least July of 2017. Exhibit A, pages 92-99.
6. On February 20, 2017, Respondent applied for assistance from the Department, including FAP benefits. Exhibit A, pages 46-85.
7. On the application, Respondent indicated that she was not employed and that the only income her household of four receives is [REDACTED] in child support. Exhibit A, pages 59-61.
8. Respondent signed the application, thereby certifying that all information contained within the application was truthful. Exhibit A, pages 67-68.
9. The application further informed Respondent that if she was dishonest on the application or intentionally failed to report a change in circumstances and received benefits to which she was not entitled, she could be disqualified from the program and be required to pay back any benefits wrongfully received. Exhibit A, pages 67-68.
10. From the time Respondent applied for benefits through at least July of 2017, Respondent never reported any income from [REDACTED] to the Department.
11. Based on Respondent's failure to inform the Department of her income, the Department overissued Respondent FAP benefits. Exhibit A, pages 100-116.
12. The Department's OIG filed a hearing request on July 2, 2018, to establish an OI of FAP benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, page 1.
13. This is Respondent's first IPV, and the OIG has requested that Respondent be disqualified from receiving FAP benefits for a period of one-year.
14. The OIG considers the fraud period to be February 1, 2017, through June 30, 2017.
15. During the fraud period, Respondent was issued \$2,215.00 in FAP benefits. Exhibit A, pages 3, 100-116.

16. During the fraud period, Respondent was only entitled to FAP benefits of \$407.00. Exhibit A, pages 3, 100-116.
17. The Department is not seeking a finding of an overissuance as the debt has already been established.
18. Respondent did not have any apparent mental physical impairment that would limit her understanding or ability to fulfill her reporting requirement.
19. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services as undeliverable.

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 his or her reporting responsibilities. BAM 720 (January 1, 2016) page 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, page 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, 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 (October 1, 2016), pages 11-12. The Department clearly and

correctly instructed Respondent to report changes to the Department within 10 days. Respondent failed to report that she was employed or had any income despite continuously working and receiving paychecks from January of 2017 through at least sometime in July of 2017.

Additionally, Respondent was required to completely and truthfully answer all questions in forms and in interviews. BAM 105, page 9. On [REDACTED], 2017, Respondent submitted another application for FAP benefits and certified that the only income in the household was [REDACTED] per week in child support she received. However, at that time, Respondent was working for [REDACTED] and had already received two paychecks, with many more on the way. Thus, Respondent not only failed to timely report the change in income, she affirmatively misrepresented her income when filing a subsequent application with the Department.

Respondent's failure to report the income change 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 the Department to recalculate and reduce her FAP benefits. Further bolstering this conclusion is the fact that Respondent affirmatively misrepresented her employment status on the February 20, 2017, application. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her reporting requirement. The Department has proven by clear and convincing evidence that Respondent committed an intentional program violation.

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, pages 15-16. In general, clients are disqualified for standards 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 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 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 established by clear and convincing evidence that Respondent committed an IPV with respect to her FAP benefits.
2. Respondent is subject to a one-year disqualification from receiving FAP benefits.

IT IS FURTHER ORDERED that Respondent shall be disqualified from receiving FAP benefits for a period of one year.



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
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Respondent

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