



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: September 12, 2018
MAHS Docket No.: 18-007251
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 September 11, 2018, from Lansing, Michigan. The Department was represented by Holly Brown, Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and represented herself. During the hearing, 57 pages of documents were offered and admitted as Department's Exhibit A, pages 1-57.

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, including FAP benefits. Exhibit A, pp. 11-23.
2. On the application, Respondent indicated that she had [REDACTED]. Exhibit A, pp. 11-23.

3. On the application, Respondent acknowledged her duty to report an income or employment change for any group member within ten days of receiving the first paycheck. Exhibit A, pp. 21-23.
4. The application further informed Respondent that if she intentionally failed to report a change in group 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, pp. 21-23.
5. On October 19, 2016, the Department issued to Respondent a Notice of Case Action informing Respondent that she was approved for FAP benefits of \$156 per month. The Notice of Case Action further informed Respondent that she was required to report within 10 days any change in circumstances relevant to her FAP eligibility and that failure to do so could result in penalties and disqualification. Exhibit A, pp. 29-32.
6. On October 11, 2016, Respondent began working for Genesis HealthCare and continued to work there until at least February of 2018. Exhibit A, pp. 35-38.
7. On or about October 18, 2016, Respondent placed a telephone call to her case worker to report her new job. She left a message, but the phone call was not returned. Respondent attempted to contact the Department multiple times during the ensuing months but was unable to do so.
8. Based on the Department's failure to process Respondent's reported income change, the Department overissued Respondent FAP benefits. Exhibit A, pp. 44-50.
9. The Department's OIG filed a hearing request on July 17, 2018, to establish IPV disqualification. Exhibit A, p. 1.
10. Respondent has two substantiated IPV's with respect to the FAP program. If established, this would be Respondent's third IPV, and the OIG has requested that Respondent be disqualified from receiving FAP benefits for life.
11. The OIG considers the fraud period to be December 1, 2016, through February 28, 2017.
12. The Department is not seeking a finding of an overissuance as the Department considers the debt to have been already established.
13. Respondent did not have any apparent mental physical impairment that would limit her understanding or ability to fulfill her reporting requirement.
14. 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 not 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 credibly testified that she in fact did report the change in income to the Department well before the deadline. Thus, the Department failed to show by clear and convincing evidence that Respondent even failed to meet the program requirements. As Respondent did not violate the program, she cannot be held to have intentionally violated the program. Thus, on the record presented, Respondent did not commit an IPV.

The Department's position is that Respondent is not telling the truth when she claims to have contacted the Department in October of 2016 and reported her new employment and income. In support of that position, the Department offered a number of case notes from Respondent's case worker that seemed to contradict Respondent's testimony and

an email chain between Ms. Brown and the case worker. Those case notes and emails were written by a Department employee who is still employed by the Department and could have been presented by the Department to testify in the hearing. Instead of presenting the worker, who then would have been subject to cross examination by Respondent, the Department offered her hearsay statements to establish the single most important fact in this matter – that Respondent did not report her income or employment in a timely manner. In such circumstances, those hearsay statements are unreliable, and to base a decision on them would manifestly unjust, particularly when they are the only statements offered to rebut Respondent's live testimony to the contrary. Cross examination is a hallmark of the American legal system. While the rules of evidence may be relaxed in an administrative hearing, they are not relaxed to the point of allowing the consideration of unreliable hearsay statements regarding dispositive factual matters made by parties who are available to testify.

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 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.

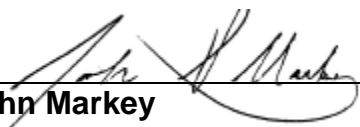
DECISION AND ORDER

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 with respect to her FAP benefits.
2. Respondent is not subject to a disqualification from receiving FAP benefits.

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

JM/



John Markey
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

