



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: November 16, 2018
MAHS Docket No.: 18-007944
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 November 14, 2018, from Lansing, Michigan. The Department was represented by [REDACTED] 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, 60 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-60.

ISSUES

1. Did Respondent receive an overissuance (OI) of 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 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 submitted to the Department an application for FAP benefits. Exhibit A, pp. 10-20.

2. Respondent signed the application and thereby certified that the information Respondent provided in the application was true. Further, Respondent acknowledged that he understood lying to the Department to get benefits could result in termination of his benefits, disqualification of future benefits, and the initiation of fraud proceedings against him. Exhibit A, p. 20.
3. Sometime in March of 2016, Respondent began working for [REDACTED] and continued to work there regularly until at least April of 2017. Exhibit A, pp. 21-44.
4. Respondent did not report his employment with or income from [REDACTED] to the Department.
5. From June 1, 2016, through December 31, 2016, the Department issued Respondent \$1,358 of FAP benefits based on a monthly income of zero. Exhibit A, pp. 45-60.
6. On July 25, 2018, the Department's OIG filed a hearing request to establish an IPV.
7. The Department's OIG requested that Respondent be disqualified from receiving FAP benefits for one year for a first alleged IPV.
8. The Department considers the alleged fraud period to be from June 1, 2016, through December 31, 2016.
9. During the alleged fraud period, Respondent was issued \$1,358 of FAP benefits, and the Department believes Respondent was only entitled to \$80 during that time period. Thus, the Department is seeking to establish an overissuance of FAP benefits of \$1,278.
10. 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.

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 2016), p. 1. When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1.

In this case, Respondent received more benefits than he was entitled to receive. The Department determined Respondent's eligibility without budgeting his wages from his employment with ██████████, which caused Respondent's income to be understated. Respondent's unreported income reduced the amount of FAP benefits that Respondent was eligible to receive. The Department presented sufficient evidence to establish that Respondent was overissued \$1,278 of FAP benefits from June 1, 2016, through December 31, 2016.

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 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. 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 application, Respondent did acknowledge that she received certain instructions in the Application Booklet. However, the Department did not present a copy of the instructions that Respondent acknowledged receiving. Without knowing what those instructions were, 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, 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

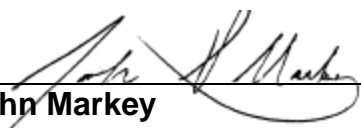
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has not established by clear and convincing evidence that Respondent committed an IPV with respect to her FAP benefits.
2. The Department has established by clear and convincing evidence that Respondent received an overissuance of FAP benefits in the amount of \$1,278 that the Department is entitled to recoup and/or collect.
3. Respondent is not subject to a one-year disqualification from receiving FAP benefits.

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

IT IS FURTHER ORDERED that the Department may initiate recoupment and/or collection procedures for the total overissuance amount of \$1,278 established in this matter less any amounts already recouped and/or collected.

JM/dh



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

