



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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Date Mailed: October 18, 2018
MAHS Docket No.: 18-008368
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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 October 3, 2018, from Lansing, Michigan. The Department was represented by Thomas Malik, 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, 84 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-84.

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 ██████████, 2016, Respondent submitted to the Department an application for FAP benefits. Exhibit A, pp. 13-32.

2. On the application, Respondent indicated that her household included herself, ██████████, and Respondent's three children. Respondent indicated on the application that ██████████ is her boyfriend as well as the father of at least one of her children. Exhibit A, pp. 13-32.
3. Based on the information provided in the application, the Department issued to Respondent a December 19, 2016, Notice of Case Action informing Petitioner that she was approved for \$578 in FAP benefits for the month of January of 2016 and \$649 per month thereafter. ██████████ was not included in the FAP group as he had moved out of the home. The Notice of Case Action informed Respondent that her FAP benefits were calculated on the basis of ██████████ household income. Furthermore, Respondent was directed to report any changes affecting eligibility to the Department within 10 days of the change. Changes in income or household status were specifically referred to. The document stated that "[f]ailure to report changes may make you liable to penalties provided by law for fraud." Exhibit A, pp. 33-37.
4. From sometime in June of 2016 through at least June 24, 2018, ██████████ worked full-time at Express Employment Professionals. Exhibit A, pp. 64-73.
5. In March of 2017, ██████████ moved back into the home with Respondent. However, Respondent did not report this information to the Department until July 12, 2017. Exhibit A, p. 63.
6. For the entire time from when ██████████ moved back into the household in March of 2017 until Respondent's FAP case was closed, effective September 1, 2017, ██████████ was working substantially more than 40 hours per week. During that time, Respondent's FAP benefits were calculated and issued without regard to ██████████ income, resulting in a substantial overissuance of FAP benefits. Exhibit A, pp. 64-73.
7. For the entire period that Respondent and ██████████ were living together, the Department did not consider any of ██████████ income when calculating Respondent's FAP benefits, nor was ██████████ included in the FAP group despite being a mandatory group member.
8. Based on Respondent's failure to accurately inform the Department of her household income and complete exclusion of her husband from the group, the Department issued Respondent FAP benefits based on a much lower income than was appropriate. Exhibit A, pp. 74-82.
9. The Department's OIG filed a hearing request on August 7, 2018, to establish an OI of FAP benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, pp. 1-2.

10. This is Respondent's second alleged IPV, and the OIG has requested that Respondent be disqualified from receiving FAP benefits for a period of two years. Exhibit A, p. 84.
11. The OIG considers the fraud period to be May 1, 2017, through August 31, 2017. Exhibit A, pp. 1-10.
12. During the alleged fraud period, Respondent was issued \$2,596 in FAP benefits. Exhibit A, pp. 74.
13. During the fraud period, Respondent was not entitled to any FAP benefits. Exhibit A, pp. 74-82.
14. The Department alleges that Respondent received an OI of FAP benefits in the amount of \$2,596. Exhibit A, pp. 1-10, 74-82.
15. Respondent did not have any apparent mental physical impairment that would limit her understanding or ability to fulfill her reporting requirement.
16. 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.

Overissuance

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (October 1, 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 she was entitled to receive. Parents and their children under age 22 who live together must be in the same group. BEM 212 (January 1, 2017), p. 1. As of March of 2017, [REDACTED] was living with Respondent and their common child. Thus, [REDACTED] was a mandatory FAP group

member. Despite ██████'s mandatory inclusion in the FAP group, the Department issued Respondent benefits without consideration of ██████'s income or inclusion in the home. When factoring in all of the group members and the relevant information, it is clear that Respondent was given an overissuance of FAP benefits. To calculate the overissuance, the Department corrected the group by including all group members in a single group and factoring in the actual income. During the hearing, the Department presented sufficient evidence to establish that Respondent was overissued \$2,596 of FAP benefits during the alleged fraud period.

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) 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, the Department has met its burden. Respondent was required to completely and truthfully answer all questions in forms and in interviews. BAM 105 (October 1, 2016), p. 8. Petitioner was made aware that she was required to report changes in household income and makeup within 10 days after the change occurred. She was repeatedly reminded of that requirement and the consequences for failing to follow that rule.

Respondent's failure to accurately report ██████'s move back into the home or his income 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 any changes yet failed to do so. Had she been honest, it would have caused the Department to recalculate and reduce or eliminate her FAP benefits. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her requirements to the Department. 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, pp. 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.

In this case, Respondent was found to have committed a previous IPV related to FAP benefits. Thus, this is Respondent's second IPV related to FAP benefits. Therefore, Respondent is subject to a two-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. Respondent received an overissuance of FAP benefits in the amount of \$2,596 that the Department is entitled to recoup and/or collect.
2. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to his FAP benefits.
3. Respondent is subject to a two-year disqualification from receiving FAP benefits.

IT IS ORDERED that the Department may initiate recoupment and/or collection procedures for the amount of \$2,596 established in this matter, less any amounts already recouped and/or collected.

IT IS FURTHER ORDERED that Respondent is disqualified from receiving FAP benefits for a period of 24 months.

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

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

DHHS

Pam Farnsworth
903 Telegraph
Monroe, MI 48161

Monroe County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Respondent

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