



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: October 31, 2018
MAHS Docket No.: 18-009220
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 Titles 7 and 42 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16 and 42 CFR 431.230(b). After due notice, a telephone hearing was held on October 30, 2018, from Lansing, Michigan. The Department was represented by Adriane Laugavitz, 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, 81 pages of documents were offered and admitted as Department's Exhibit A, pages 1-81.

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 Food Assistance Program (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 June 11, 2015, Respondent began working for [REDACTED]. As of October 26, 2015, Respondent was earning \$14 per hour at [REDACTED] and working approximately 30 hours per week. Exhibit A, pp. 54-73.

2. On [REDACTED], 2015, Respondent submitted to the Department an application for FAP benefits. On the application, Respondent indicated that her household had approximately \$900 in monthly income, all of which came from employment with [REDACTED]. Notably, Respondent certified that she earned \$9 per hour from this work, despite working for \$14 per hour for at least one month and receiving multiple paychecks based on the \$14 per hour rate. Exhibit A, pp. 10-51, 54-73.
3. Respondent signed the application and thereby certified that the information Respondent provided in the application was true. Further, Respondent acknowledged that she understood lying to the Department to get benefits could result in termination of her benefits, disqualification of future benefits, and the initiation of fraud proceedings against her. Respondent also acknowledged that she received, reviewed, and understood the information contained within the DHHS publication titled "Things You Must Do." Exhibit A, p. 33.
4. "Things You Must Do" advised Respondent that she was required to report any changes in income or employment within 10 days and that an intentional failure to do so violated the law and if proven, would result in criminal and/or civil penalties, including disqualification from the program. Exhibit A, p. 34.
5. From December 1, 2015, through February 28, 2016, the Department issued Respondent a total of \$2,313 in FAP benefits based on the fraudulent wage information contained in Respondent's FAP application. Exhibit A, p. 74.
6. On August 21, 2018, the Department's OIG filed a hearing request to establish an IPV. Exhibit A, pp. 1-4.
7. The Department's OIG requested that Respondent be disqualified from receiving FAP benefits for one year for a first alleged IPV. Exhibit A, pp. 1-4.
8. The Department considers the alleged fraud period to be from December 1, 2015, through February 28, 2016. Exhibit A, pp. 1-4.
9. During the alleged fraud period, the Department alleges that Respondent was issued \$2,313 of FAP benefits, and the Department believes Respondent was only entitled to receive \$652 in FAP benefits during that time period. Thus, the Department asserts that Respondent was overissued \$1,661 in FAP benefits during the alleged fraud period. Exhibit A, pp. 1-4.
10. The Department is not seeking to establish an overissuance as the Department considers the debt to have already been established. Exhibit A, p. 1.
11. Respondent did not have any apparent mental or physical impairment that would limit her understanding or ability to fulfill her reporting requirements.

12. A Notice of Hearing was mailed to Respondent at her last known address, and it was not returned by the United States Postal Service 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 their reporting responsibilities. BAM 720 (October 2015) 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 (July 2015), p. 8. On November 30, 2015, Respondent submitted her FAP application to the Department and certified that she had about \$900 in monthly income working for Reliance One at a rate of \$9 per hour. However, for at least the previous month, Respondent had been working at a rate of \$14 per hour. She had received multiple paychecks under that rate of pay, which is over 50% greater than the rate of pay Respondent fraudulently certified, under penalty of perjury, to be true.

In addition to grossly misrepresenting her rate of pay on the application, Respondent grossly understated her monthly income at \$900. Respondent received weekly paychecks from Reliance One. The four weekly paychecks issued prior to the

November 30, 2015, FAP application totaled \$2,162.30. Exhibit A, pp. 56-59. Those paychecks were wholly typical over the relevant time period. Exhibit A, pp. 54-73.

Respondent's intentional and egregious misrepresentation of her income and terms of employment to the Department must be considered an intentional misrepresentation to obtain FAP benefits she was not entitled to since Respondent knew or should have known that the accurate statement of that income would have caused the Department to factor that income into the FAP calculation, leading to either a lesser amount of monthly FAP benefits or no FAP benefits at all. Respondent's intentional misrepresentations cannot reasonably be considered innocent errors - Respondent's monthly income was more than two and a half times greater than she stated on her application and her rate of pay was almost 60% higher. Respondent certified as true a blatantly untrue set of facts knowing full well the penalties for doing so. 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, page 15. 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 evidence that Respondent had been previously found guilty of an IPV with respect to FAP benefits. Therefore, Respondent is subject to a one-year disqualification from receiving FAP benefits.

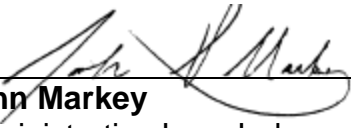
DECISION AND ORDER

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.
2. Respondent should be disqualified from receiving FAP benefits for one year.

IT IS ORDERED THAT Respondent shall be disqualified from 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

Lindsay Miller
125 E. Union St 7th Floor
Flint, MI 48502

Genesee County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED]
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[REDACTED], MI [REDACTED]