



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

Date Mailed: November 16, 2018
MAHS Docket No.: 18-009311
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 October 30, 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, 138 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-138.

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] 2013, Respondent submitted to the Department an application for FAP benefits. On the application, Respondent indicated that her household had zero income. Exhibit A, pp. 11-53.

2. Respondent signed the application and thereby certified that the information Respondent provided in the application was true and that she received, read, and understood the information contained in the DHHS publication entitled "Things You Must Do." The "Things You Must Do" publication informed Respondent that she was required to report to the Department all changes that could impact her eligibility for benefits within 10 days of the change. Respondent acknowledged that she understood lying to the Department or failing to properly report changes to get benefits could result in termination of her benefits, disqualification of future benefits, and the initiation of fraud proceedings against her. Exhibit A, pp. 11-53.
3. Sometime in September of 2013, Respondent began working regularly at [REDACTED]. On October 4, 2013, Respondent received a paycheck from [REDACTED]. Respondent continuously worked for and received paychecks from [REDACTED] until at least the end of December of 2013. During the month of December of 2013, Respondent was paid \$1,202.94 in wages from [REDACTED]. Respondent never reported her employment with [REDACTED] to the Department. Exhibit A, pp. 54-55.
4. On May 3, 2014, Respondent began working for [REDACTED]. Respondent worked about 40 hours per week at [REDACTED] from May 3, 2014, through October 12, 2014. Her first paycheck was issued on May 24, 2014, and her final paycheck was issued October 24, 2014. Respondent never reported this income or employment to the Department. Exhibit A, pp. 99-100.
5. On May 8, 2014, Respondent began working for [REDACTED] at its [REDACTED] location. Respondent continuously worked approximately 20 hours per week at a rate of \$9.50 per hour from May 8, 2014, through at least May of 2015. Exhibit A, pp. 101-106.
6. On [REDACTED] 2014, Respondent submitted to the Department an application for FAP benefits. On the application, Respondent indicated that the only household earned income from employment was from Respondent's job with [REDACTED]. Respondent informed the Department that her household income was \$500 per month. Exhibit A, pp. 56-98.
7. 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. Exhibit A, p. 81.
8. From December 1, 2013, through December 31, 2013, the Department issued Respondent \$750 of FAP benefits based on the income and expense information provided by Respondent. From July 1, 2014, through April 30, 2015, the Department issued to Respondent \$9,025 in FAP benefits without taking into

consideration Respondent's reported income from [REDACTED] or her unreported income from [REDACTED] Exhibit A, pp. 107-137.

9. On August 28, 2018, the Department's OIG filed a hearing request to establish an IPV.
10. The Department's OIG requested that Respondent be disqualified from receiving FAP benefits for two years for a second alleged IPV. Exhibit A, p. 138.
11. The Department considers the alleged fraud period to be from December 1, 2013, through December 31, 2013, and from July 1, 2014, through April 30, 2015. Exhibit A, pp. 1-5.
12. During the alleged fraud periods, Respondent was issued \$9,775 of FAP benefits, and the Department believes Respondent was only entitled to \$5,812 during that time period. Thus, the Department believes Respondent received an overissuance of FAP benefits of \$3,963. Exhibit A, pp. 1-5, 107-137.
13. Respondent did not have any apparent mental or physical impairment that would limit her understanding or ability to fulfill her reporting requirements.
14. 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.

Overissuance

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (May 2014), 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. The Department determined Respondent's eligibility without budgeting her wages from her

employment with any of the three employers involved in this case, which caused Respondent's income to be understated. Had Respondent's actual income been factored into the calculation of Respondent's FAP benefits, she would have received substantially less during the fraud periods.

However, the information presented by the Department shows that the Department erred in calculating the amount of the overissuance. On the [REDACTED], 2018, FAP application, Respondent reported to the Department that she was working at [REDACTED]. The Department failed to include that income in the budgets when dispensing benefits from July of 2014 through April of 2015. On the Department's overissuance budgets presented during the hearing, Respondent's earned income with [REDACTED] has been included in the section for unreported earned income when in fact it was reported. Had it been included in the reported earned income section where it belonged, that income would have been subject to a 20% disregard, ultimately reducing the amount of the overissuance.

Thus, while the Department presented sufficient evidence to establish that Respondent received an overissuance of FAP benefits, it failed to substantiate the amount it is seeking to impose. Thus, the Department must recalculate the overissuance. When recalculating the overissuance, the Department must treat Respondent's earnings from [REDACTED] as properly reported earned income subject to the 20% disregard.

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 (August 2012), p. 1. BAM 720 (May 2014) 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 report changes in her circumstances to the Department within 10 days of the date of the change. BAM 105 (November 2012), p. 7. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent failed to report that she had obtained a job or had income from Mold

Masters despite continuously working and receiving paychecks from October of 2013 through at least the end of December of 2013.

Furthermore. Respondent was required to completely and truthfully answer all questions in forms and in interviews. BAM 105 (April 2014), p. 6. On May 3, 2015, Respondent began working for [REDACTED]. On May 8, 2018, Petitioner began working for [REDACTED]. On [REDACTED] 2015, Respondent submitted a FAP application to the Department and certified that her household's only income from employment came from Respondent's job with [REDACTED]. At the time she submitted the application to the Department, Respondent was working for both [REDACTED] and [REDACTED]. Thus, Respondent affirmatively misrepresented her household's income and employment status when filing her application for assistance with the Department.

Respondent's failure to report the income and 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 inclusion 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. Just a few weeks after beginning to work for Whispering Pines, Respondent submitted the fraud-laden application. 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, 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, Respondent was previously found guilty of an IPV related to her 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. The Department has 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 Petitioner received an overissuance of FAP benefits that the Department is entitled to recoup

and/or collect. However, the Department did not properly calculate the amount of the overissuance.

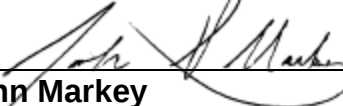
3. Respondent is subject to a two-year disqualification from receiving FAP benefits.

IT IS ORDERED that Respondent shall be disqualified from receiving FAP benefits for a period of two years.

IT IS FURTHER ORDERED that the Department must recalculate the overissuance amount by providing Respondent the benefits of the 20% earned income deduction with respect to Respondent's reported income from Leisure Living (Devonshire).

IT IS FURTHER ORDERED that upon recalculating the overissuance, the Department must notify Respondent of its new calculation in writing.

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]
[REDACTED]
[REDACTED]