



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

██████████
████████████████████
██████████ MI ██████████

Date Mailed: December 6, 2018
MAHS Docket No.: 18-009359
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 December 5, 2018, from Lansing, Michigan. The Department was represented by Julie Price, 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, 54 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-54.

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 November ██████ 2016, Respondent submitted to the Department an application for FAP benefits. On the application, Respondent indicated that her household consisted of herself and her two children, ██████ and ██████. Respondent informed the Department that nobody in the household had a job or any income from a job. Exhibit A, pp. 10-43.

2. Respondent signed the application and thereby certified that the information Respondent provided in the application was true and she understood her responsibility to report any changes to income or job status within 10 days after receiving her first paycheck. Further, Respondent acknowledged that she understood lying to the Department to get benefits or failing to report as required could result in termination of her benefits, disqualification of future benefits, and the initiation of fraud proceedings against her. Exhibit A, pp. 10-43.
3. The very same day that Respondent submitted the application for FAP benefits to the Department, ██████ began working for a ██████ ██████ (█████) in Lansing, Michigan. ██████ first paycheck was issued November ██████ 2016. ██████ regularly worked for ██████ and had earnings through June 2017. Exhibit A, pp. 45-47.
4. Respondent did not report ██████ employment with or income from ██████ to the Department.
5. From January 1, 2017, through May 31, 2017, the Department issued Respondent \$█████ of FAP benefits based on a reported income of ██████ Exhibit A, pp. 48-54.
6. On ██████ ██████ ██████ 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 January 1, 2017, through May 31, 2017.
9. During the alleged fraud period, Respondent was issued \$█████ of FAP benefits, and the Department believes Respondent was only entitled to \$█████ during that time period. Thus, the Department is seeking to establish an overissuance of FAP benefits of \$█████ Exhibit A, pp. 1-4, 48-54.
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 (October 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. The Department determined Respondent's eligibility without budgeting her daughter's wages from her 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 \$ █████ of FAP benefits from January 1, 2017, through May 31, 2017.

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), 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, 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 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 2016), pp. 11-12. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days at the time of application. Respondent failed to report that her daughter and fellow group member, █████ became employed or had any income despite continuously working and receiving paychecks from November 2016 through at least sometime in June of 2017.

Additionally, Respondent was required to completely and truthfully answer all questions in forms and in interviews. BAM 105, p. 9. On November █ 2016, Respondent submitted the application to the Department and certified that nobody in the house had a job or income. Further, Respondent certified that nobody in the household will receive any new income that month. However, that very same day, Respondent's daughter worked her first day for █ and would have been expected to receive income from that job by the end of the month.

Respondent's failure to report the income or employment change 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 the change to the Department and that reporting the change to the Department would have caused the Department to recalculate and reduce her FAP benefits. Further bolstering this conclusion is the suspicious timing of the application on the same date █ began working. Based on the combination of the timing and the failure to report the change to income, it is clear that Respondent had an intent to deceive the Department regarding her household income in order to maximize her FAP benefits.

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, 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, there is no indication in the record that Respondent was previously found guilty of an IPV related to FAP benefits. Thus, this is Respondent's first IPV related to FAP benefits. Therefore, Respondent is subject to a one-year disqualification from receiving FAP benefits.

DECISION AND ORDER

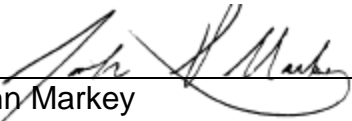
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV 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 \$ [REDACTED] that the Department is entitled to recoup and/or collect.
3. Respondent is subject to a one-year disqualification from receiving FAP benefits.

IT IS FURTHER ORDERED that Respondent shall be disqualified from receiving FAP benefits for a period of one year.

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

JM/nr



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

Amber Gibson
5303 South Cedar
PO BOX 30088
Lansing, MI
48911

Ingham County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

[REDACTED]
[REDACTED], MI
[REDACTED]