



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: January 14, 2019
MAHS Docket No.: 18-009572
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 December 18, 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, 59 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-59.

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) with respect to the Food Assistance Program (FAP)?
2. Should Respondent be disqualified from receiving FAP benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material, and substantial evidence on the whole record, finds as material fact:

1. Respondent was an ongoing recipient of FAP benefits from the Ohio Department of Job and Family Services (Ohio). On [REDACTED] 2016, Respondent submitted to Ohio a Request to Reapply for Cash and Food Assistance. From at least May 2016 through June 2017, Respondent was an active recipient and user of Ohio issued FAP benefits. Exhibit A, pp. 35-39; 46.

2. On [REDACTED], 2017, Respondent submitted to the Department an application for FAP benefits. On the application, Respondent indicated that she was not receiving FAP benefits from any other state. Exhibit A, pp. 9-34.
3. On the application, Respondent acknowledged that she received, reviewed, and agreed with the pamphlet entitled Things You Must Do and certified that all information she provided was true. Respondent was warned of penalties for fraud if she was dishonest. Exhibit A, p. 32.
4. The Things You Must Do pamphlet advised Respondent that she was required to report any changes in address or moving out of the state of Michigan 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. 33.
5. Respondent's application was approved, and the Department thereafter began providing Respondent with monthly FAP benefits. Exhibit A, pp. 58-59.
6. From the time of application, Respondent used her Department-issued FAP benefits exclusively in Michigan. Exhibit A, pp. 48-57.
7. Respondent did not have an apparent mental impairment that would limit her understanding or ability to fulfill this requirement.
8. The Department's OIG filed a hearing request on September 7, 2018, to establish an IPV. Exhibit A, pp. 1-5.
9. From January 17, 2017, through June 30, 2017, the Department issued to Respondent \$890 in FAP benefits. The Department is not seeking the establishment of an overissuance as Respondent has filed for bankruptcy. Exhibit A, pp. 1-5.
10. This was Respondent's first alleged IPV. Thus, the OIG requested that Respondent be disqualified from receiving FAP benefits for one year. Exhibit A, pp. 1-5.
11. The Department considers the alleged fraud period to be from January 17, 2017 through June 30, 2017. Exhibit A, pp. 1-5.
12. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the US Post Office 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), 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.

The Department alleges that Respondent's failure to report on her FAP application that she was currently receiving FAP benefits from Ohio constituted an IPV with respect to the Food Assistance Program.

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 completely and truthfully answer all questions in forms and in interviews. BAM 105 (April 2016), p. 9. The Department clearly and correctly instructed Respondent be honest and the consequences for failing to do so. Despite being so informed, Respondent dishonestly represented on her January 17, 2017, FAP application that she was not receiving FAP benefits from any other state when she was actively receiving FAP benefits from Ohio. Respondent's transaction history from Michigan and Ohio show that she routinely used benefits from both states on the same day, further bolstering the conclusion that Respondent was intentionally defrauding both Michigan and Ohio.

Respondent's dishonest statements to the Department must be considered an intentional misrepresentation to maintain her FAP benefits since Respondent knew or should have known that she could only receive FAP benefits from one state at any given time. It is clear that Respondent had an intent to deceive the Department regarding her out of state benefits 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 requirements. 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.

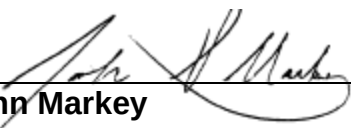
DECISION AND ORDER

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

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

JM/hb


John Markey
Administrative Law Judge
for Robert Gordon, Acting 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

Mariah Schaefer
3255 122nd Ave Ste 300
Allegan, MI 49010

Allegan 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]