



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: February 22, 2019
MAHS Docket No.: 18-011146
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, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on February 14, 2019, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear at the hearing. It was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5). During the hearing, a 67-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-67.

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 the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED] 2016, Respondent submitted to the Department an application for FAP benefits for a household size of four people. Exhibit A, pp. 11-43.

2. On the application, Respondent indicated that nobody in her home was employed. Exhibit A, p. 19.
3. Included with the application was a set of instructions entitled "Things You Must Do." The instructions clearly informed Respondent that she was required report certain types of changes in circumstances to the Department within ten days of the change. Regarding starting employment, Respondent was informed that she was required to report the change to the Department within ten days of receiving her first payment. Further, the instructions stated that failure to properly report a change could result in penalties for fraud. Exhibit A, p. 26.
4. Respondent signed the application, thereby certifying that all of the information was truthful and acknowledging that she read, understood, and agreed with her responsibilities, including those responsibilities found in the "Things You Must Do" instructions. Exhibit A, p. 25.
5. On July 8, 2016, the Department issued to Respondent a Notice of Case Action informing Respondent that her application for FAP benefits had been approved and that Respondent would be receiving \$████ per month in FAP benefits. The Notice of Case Action included a list of income and expenses the Department took into consideration in calculating Respondent's monthly FAP benefits amount. For the "Earned Income" line item, the Department was factoring in \$0. Exhibit A, pp. 44-49.
6. The Notice of Case Action included instructions under a bold-print heading titled "Reporting Changes." The instructions directed Respondent that it is her "responsibility...to notify this office with 10 days of any changes in your circumstances which may affect [her] eligibility for assistance. This includes any changes in employment [and] income... Failure to report changes may make you liable to penalties provided by law for fraud." Exhibit A, p. 47.
7. Issued along with the Notice of Case Action on July 8, 2016, was a blank form titled "Change Report." The document directed Respondent to use that form if she had any relevant changes in circumstances. Specifically, Respondent was directed to "[u]se this form to report changes about anyone in your home within 10 days of the time you learn of them (For earned income, within 10 days of receiving your first payment.) Exhibit A, pp. 48-49.
8. Sometime in mid-November 2016, Respondent began working full-time for ██████████ (██████████ at ██████████ in ██████████ Michigan. Respondent received her first paycheck on December 2, 2016. Exhibit A, pp. 54-58.
9. Respondent continued to work full-time hours at ██████████ until at least February 19, 2017. Her last paycheck was issued March 10, 2017. From December 2, 2016,

through March 10, 2017, ██████ paid Respondent \$19,709.76 in wages. Exhibit A, pp. 54-58.

10. In addition to Respondent's employment with ██████, Respondent began working for and earning wages with ██████ (██████████) during the first quarter of 2017 and continued working there until at least sometime during the third quarter of 2017. Exhibit A, p. 59.
11. Respondent did not report either of her jobs to the Department while still collecting monthly FAP benefits based on an earned income of \$0.
12. From February 1, 2017 through April 30, 2017, the Department issued to Petitioner \$█████ in FAP benefits. Respondent was only entitled to receive \$█████ during that period. The Department has already established that Respondent received an overissuance of FAP benefits totaling \$█████ Exhibit A, pp. 61-67.
13. On October 23, 2018, the Department's OIG filed a hearing request to establish an IPV with respect to FAP. The Department's OIG requested that Respondent be disqualified from receiving FAP benefits for one year for a first alleged IPV. The Department considers the alleged fraud period to be February 1, 2017 through April 30, 2017. Exhibit A, pp. 1-8.
14. 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 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; 7 CFR 273.18.

In this case, Respondent received more benefits than she was entitled to receive. The Department determined Respondent's eligibility without budgeting Respondent's wages from her employment with either [REDACTED] or [REDACTED] which caused Respondent's group income to be understated. When factored into the calculation, the unreported income reduced the amount of FAP benefits that Respondent was eligible to receive. Prior to the hearing in this matter, the Department had already established that Respondent was overissued \$ [REDACTED] of FAP benefits from February 1, 2017, through April 30, 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; 7 CFR 273.16(c).

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 group's circumstances to the Department within 10 days of the date of the change. BAM 105 (October 2016), pp. 11-12; 7 CFR 273.12(a)(1)-(2). The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days at the time of the application and again on the Notice of Case Action mailed to Respondent just a few months prior to the unreported change. Respondent failed to report that she became employed or had any income despite her continuously working and receiving paychecks from December 2016 through at least the end of the fraud period.

Respondent's failure to report the income or employment change to the Department must be considered an intentional omission 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. Respondent applied for FAP benefits and was approved on the basis of zero earned income. Respondent was told that her monthly FAP benefits amount was calculated on the basis of her having zero earned income per month. Respondent was repeatedly informed that she was

required to report any changes to her income and given clear instructions on how to do so. Respondent obtained full-time employment in November 2016 at [REDACTED] and had earnings of greater than \$[REDACTED] per month while employed there for multiple months. Despite receiving substantial income, Respondent continued to receive and use her FAP benefits that she knew were only issued to her because the Department believed she had zero monthly earned income. It is clear that Respondent knew of the reporting requirements and 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; 7 CFR 273.16(b). 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 to have committed 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/cg



John Markey
Administrative Law Judge
for Robert Gordon, 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

Via Email:

MDHHS-Ogemaw-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

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