



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: April 30, 2019
MOAHR Docket No.: 18-011549
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 March 4, 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 96-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-96.

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. Respondent was an ongoing recipient of FAP benefits from the Department.
2. On March 4, 2018, the Department issued to Respondent a Redetermination in order to gather relevant information regarding Respondent's ongoing eligibility for

FAP benefits. Respondent returned the completed Redetermination on [REDACTED], 2017. Exhibit A, pp. 77-84.

3. On [REDACTED] 2017, Respondent began working for [REDACTED] ([REDACTED]). On May 1, 2017, Respondent received his first paycheck from his employment with [REDACTED]. Respondent was employed and earning income from his employment with [REDACTED] continuously from that time through at least March 2018. Exhibit A, pp. 37-70.
4. On May 24, 2017, the Department issued to Respondent a Notice of Case Action informing Respondent that he was approved for monthly FAP benefits in the amount of \$194 for the period from May 1, 2017, through April 30, 2018. The Notice of Case Action stated that his monthly benefits were based on a monthly income of \$0. Further, Respondent was informed that he had a responsibility to report any changes to his income within 10 days of the change. Respondent was informed that failure to report changes may make him liable for penalties for fraud. Exhibit A, pp. 71-74.
5. Also on May 24, 2017, the Department issued to Respondent an document titled "Change Report." The instructions on that form directed Respondent 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. 75-76.
6. Respondent never reported his employment with or income from [REDACTED] to the Department while still collecting and using monthly FAP benefits. Exhibit A, pp. 37-96.
7. From July 1, 2017, through March 31, 2018, the Department issued to Petitioner \$1,590 in FAP benefits. Respondent was not entitled to receive any FAP benefits during that period. The Department has already established that Respondent received an overissuance of FAP benefits totaling \$1,590. Exhibit A, pp. 12-14.
8. On November 2, 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 July 1, 2017, through March 31, 2018. Exhibit A, pp. 1-9.
9. 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 (May 2014), p. 1; 7 CFR 273.18. 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 he was entitled to receive. The Department determined Respondent's eligibility without budgeting Respondent's wages from his employment with [REDACTED] which caused Respondent's 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 \$1,590 of FAP benefits from July 1, 2017, through March 31, 2018.

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 (October 2014), 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 his group's circumstances to the Department within 10 days of the date of the change. BAM 105 (April 2014), 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 on at least two separate documents that are part of the record in this matter. Respondent failed to report that he became employed or had any new income despite him continuously working and receiving paychecks from May 2017 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 his FAP benefits since Respondent knew or should have known that he 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 his FAP benefits. Respondent was repeatedly informed that he was required to report any changes to his income and given clear instructions on how to do so. In fact, the Department even provided Respondent with a blank Change Report form that was pre-addressed to the Department with instructions on how to report the change. Respondent obtained employment with [REDACTED] in April 2017 and failed to ever report the change to the Department. It is clear that Respondent knew of the reporting and disclosure requirements and had an intent to deceive the Department regarding his income in order to maximize his FAP benefits. 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.

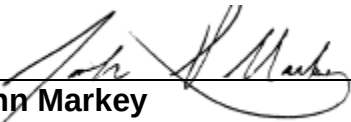
DECISION AND ORDER

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 his 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 Office Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office Of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Email:

MDHHS-Jackson-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]