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

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

[redacted]

Date Mailed: March 13, 2019
MAHS Docket No.: 18-012181
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 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], 2013, Respondent submitted to the Department an application for FAP benefits. Exhibit A, pp. 12-28.

2. On the application, Respondent indicated that he did not have any income from employment. Exhibit A, p. 20.

3. Included with the application was a set of instructions entitled "Things You Must Do." The instructions clearly informed Respondent that he was required to give complete and honest information and report certain types of changes in circumstances to the Department within ten days of the change. Regarding starting employment, Respondent was informed that he was required to report the change to the Department within ten days of receiving his first payment. Further, the instructions stated that intentionally providing false information or failing to properly report a change could result in penalties for fraud. Exhibit A, p. 27.

4. Respondent signed the application, thereby certifying that all of the information was truthful and acknowledging that he read, understood, and agreed with his responsibilities, including those responsibilities found in the "Things You Must Do" instructions. Exhibit A, p. 26.

5. Respondent's application was approved, and Respondent began receiving monthly FAP benefits. Respondent continued to receive monthly FAP benefits through at least the end of September 2016. Exhibit A, pp. 29-30.

6. During the week of August 11, 2013, Respondent began working for [redacted]. Respondent was continuously employed by [redacted] through the week of January 12, 2014. Respondent went back to work for [redacted] during the week of May 4, 2014 and was continuously employed from that point through the week of August 17, 2014. Exhibit A, pp. 31-33.

7. On May 13, 2014, the Department issued to Respondent a Redetermination in order to gather relevant information regarding Respondent's ongoing eligibility for FAP benefits. Respondent indicated that he had no income or employment despite the fact that he was employment at Express and received a paycheck just two days prior to the Department's receipt of the completed Redetermination. Respondent signed the form, which certified that all information contained therein was truthful, and returned it to the Department on June 2, 2014. Exhibit A, pp. 38-43.

8. During the week of October 1, 2014, Respondent began working for [redacted]. [redacted]. Respondent was continuously employed by [redacted] through the week of September 14, 2016. Exhibit A, pp. 34-37.

9. On May 10, 2016, the Department issued to Respondent a Redetermination in order to gather relevant information regarding Respondent's ongoing eligibility for FAP benefits. When directed to "report all sources of earned and unearned income," Respondent checked a box that indicated that nobody in the household had any income from any source. Respondent signed the form, which certified that

all information contained therein was truthful, and returned it to the Department on June 28, 2016. Exhibit A, pp. 44-49.

10. Respondent never reported his employment with or income from either [redacted] or [redacted] to the Department while still collecting monthly FAP benefits.

11. From October 1, 2013, through August 31, 2016, the Department issued to Petitioner $2,697 in FAP benefits. Respondent was only entitled to receive $1,211 during that period. The Department has already established that Respondent received an overissuance of FAP benefits totaling $1,211. Exhibit A, p. 67.

12. On November 16, 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 October 1, 2013 through August 31, 2016. Exhibit A, pp. 1-9.

13. A notice of hearing was mailed to Respondent at the last known address and was 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 either [redacted] or [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 $1,211 of FAP benefits from October 1, 2013, through August 31, 2016.

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 at the time of the application. Respondent failed to report that he became employed or had any new income despite continuously working and receiving paychecks while collecting FAP benefits based on his reported income of $0.

Additionally, Respondent was required to completely and truthfully answer all questions on forms and in interviews. BAM 105, p. 8. The Department clearly and correctly instructed Respondent to provide true and complete information on his application and both subsequent Redeterminations. There is no evidence in the record to suggest that Respondent suffered from a physical or mental impairment that would limit his understanding or ability to fulfill his reporting responsibilities. Despite being so warned, Respondent dishonestly stated on both the 2014 and the 2016 Redeterminations that he had no earned income while working regularly and earning income at Express and then TrueBlue.

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. Additionally, Respondent's affirmative misrepresentations on his 2014 and 2016 Redeterminations must also be considered intentional misrepresentations to maintain 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. While receiving FAP benefits, Respondent had income from either [redacted] or [redacted] nearly every month for over three years without ever informing the Department of the income. Then, while still employed with Express, Respondent submitted a dishonest Redetermination to the Department in 2014. In 2016, Respondent submitted a dishonest Redetermination to the Department claiming no income while regularly working at [redacted]. 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

<u>NOTICE OF APPEAL</u>: 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-Genesee-Union St.- Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

[redacted]