



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: April 5, 2019
MAHS Docket No.: 18-012287
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 April 1, 2019, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG), Kimberly St. Onge, Department Analyst, and Amy Leonard, Eligibility Specialist. Respondent appeared and represented herself. During the hearing, a 65-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-65.

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) with respect to FAP?
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. Respondent was an ongoing recipient of FAP benefits at all times relevant to this matter.

2. On July 15, 2014, the Department issued to Petitioner a Redetermination in order to gather relevant information regarding Respondent's ongoing eligibility for FAP benefits. Exhibit A, pp. 11-16.
3. Respondent returned the completed and signed Redetermination to the Department on [REDACTED] 2014. On the returned Redetermination, Respondent indicated that she had no income. Exhibit A, pp. 11-16.
4. On or about September 23, 2014, Respondent began working for [REDACTED]. On or about September 30, 2014, [REDACTED] issued to Respondent her first paycheck. Respondent worked continuously for [REDACTED] through at least sometime in 2016. Exhibit A, pp. 25-37.
5. Shortly after starting to work for [REDACTED], Respondent called the Department and left a message indicating that she had begun working.
6. On July 14, 2015, the Department issued to Petitioner a Redetermination in order to gather relevant information regarding Respondent's ongoing eligibility for FAP benefits. Exhibit A, pp. 17-22.
7. The Department indicated that Respondent returned the completed Redetermination to the Department on August 3, 2015. However, the document presented by the Department is a blank version of the July 14, 2015 Redetermination. It does not include a signature or any other indication that Respondent had submitted the document. Exhibit A, pp. 17-22.
8. Respondent received FAP benefits from December 1, 2014, through August 31, 2015, without the Department factoring in her income from her employment with [REDACTED]. Exhibit A, pp. 42-62.
9. On July 5, 2016, the Department issued to Respondent a Repayment Agreement, Form 4358-C. Respondent signed the Repayment Agreement and returned it to the Department on or about [REDACTED] 2016. By signing and returning the Repayment Agreement, Respondent acknowledged that she received an overissuance of FAP benefits from December 1, 2014, through August 31, 2015, in the amount of \$1,714 and agreed to pay that back. Exhibit A, p. 64.
10. On November 19, 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 December 1, 2014 through August 31, 2015. During that time, the Department issued to Petitioner \$1,746 in FAP benefits. The Department asserts that Respondent was only entitled to receive \$32 during that period. The Department's hearing request sought to establish an overissuance of FAP benefits of \$1,714. Exhibit A, pp. 1-8; 42-62.

11. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Service as undeliverable.
12. Respondent did not have any apparent mental or physical impairment that would limit her understanding or ability to fulfill her reporting requirements.
13. Respondent has no previous IPV's with respect to FAP. Exhibit A, p. 65.

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.

The Department's position is that Respondent committed an IPV with respect to FAP by failing to report when her household's income exceeded the simplified reporting limit and then misrepresented her household's income on the subsequently submitted Semi-Annual Contact Report.

Overissuance

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (January 2016), 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 she was entitled to receive. The Department determined Respondent's eligibility without budgeting her wages from her employment with [REDACTED], which caused Respondent's income to be understated. When factored into the equation, Respondent's 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 \$1,714 of FAP benefits from December 1, 2014, through August 31, 2015. As Respondent had already acknowledged the debt and agreed to repay the Department (and indeed has been repaying the Department), the undersigned ALJ does not have any jurisdiction to address the issue. The Department may continue to collect on the overissuance already established.

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)).

Respondent was required to report changes in her circumstances to the Department within 10 days of the date of the change. BAM 105 (April 2016), pp. 11-12. Additionally, Respondent was required to completely and truthfully answer all questions in forms and in interviews. BAM 105 (April 2016), p. 9. The Department alleges that Respondent breached both of these duties and that those breaches amounted to an IPV.

The Department, however, has not met its burden of proof in this matter. The Department did not present any false statements made by Respondent. The 2014 Redetermination was submitted prior to the time Respondent began working, so her representation that she had no income was truthful. Additionally, the 2015 Redetermination was not signed and appeared to just be a blank version of the document. Clearly, that was not a misrepresentation regarding income.

With respect to failure to report the change, the Department's position suffers from two deficiencies: (1) there is no evidence in the record that Respondent was informed of a duty to report the change and (2) Respondent credibly testified that she, in fact, did tell the Department that she was working within a short time after getting her first paycheck. Accordingly, the Department failed to meet its burden of showing by clear and convincing evidence that Respondent committed an IPV with respect to FAP by either making a false statement or intentionally failing to report a change.

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 was no IPV related to FAP benefits. Thus, Respondent is not subject to a disqualification from receiving FAP benefits.

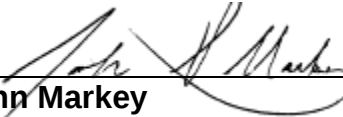
DECISION AND ORDER

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 failed to establish by clear and convincing evidence that Respondent committed an IPV with respect to her FAP benefits.
2. Respondent is not subject to a disqualification from receiving FAP benefits.

IT IS FURTHER ORDERED that the Department may continue to seek recoupment and/or collection of the overissuance of FAP benefits from December 1, 2014, through August 31, 2015, less any amounts already recouped and/or collected.

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-Lake-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]