



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: March 13, 2019
MAHS Docket No.: 18-012452
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 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. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e). During the hearing, 57 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-57.

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. Respondent's FAP group of four consisted of herself, her husband [REDACTED], and two minor children. On the Job Income Information section of the application, Respondent indicated that she had a job with [REDACTED] that had ended on September 15, 2016. However, in the same section, Respondent implied that her job was not ending, it was just going to

have reduced hours. No other job-related information was provided. Exhibit A, pp. 12-29.

2. Respondent signed the application and thereby certified that the information Respondent provided in the application was true and she understood her responsibility to report any changes per Department policy, which was provided with the application. Further, Respondent acknowledged that she understood lying to the Department to get benefits or failing to report as required could result in termination of her benefits, disqualification of future benefits, and the initiation of fraud proceedings against her. Exhibit A, pp. 26-27.
3. Respondent's application was approved, and the Department began issuing Respondent monthly FAP benefits through at least February 28, 2017. On September 19, 2016, the Department issued to Respondent a Notice of Case Action informing Respondent that she was approved for FAP benefits. The Notice informed Respondent that she was a simplified reporter and stated, "Effective the date of this notice, the only change you are required to report for the Food Assistance program is: WHEN YOUR HOUSEHOLD INCOME EXCEEDS THE LIMIT LISTED BELOW." Immediately under that directive was an income limit of \$2,628. Exhibit A, pp. 30-36.
4. Sometime in late September of 2016, [REDACTED] began working at [REDACTED] [REDACTED] continued working for [REDACTED] through at least sometime in March of 2017. [REDACTED] income from [REDACTED] exceeded \$5,000 in every month from October 2016 through January 2017. In February 2017, [REDACTED] income was not as high as the previous months, but it still exceeded the simplified reporting limit of \$2,628. Exhibit A, pp. 44-52; 56.
5. On January 3, 2017, the Department issued to Respondent a Semi-Annual Contact Report in order to gather relevant information regarding Respondent's ongoing eligibility for FAP benefits. On [REDACTED] 2017, Respondent returned to the completed form to the Department. On the form, Respondent was informed that the Department was calculating Respondent's monthly FAP amount based on a monthly household earned income of \$0. When asked "[h]as your household's gross income (including earnings from self-employment) changed by more than \$100 from the amount above." Despite the household having earned income of at least \$5,000 each of the previous few months, Respondent dishonestly indicated that her household's earned income had not changed from \$0. Respondent signed the form, certifying that the information contained in the form was true and correct to the best of her knowledge. Exhibit A, pp. 53-54.
6. From December 1, 2016, through February 28, 2017, the Department issued to Petitioner \$690 in FAP benefits. Respondent was only entitled to receive \$6 during that period. The Department has already established that Respondent received an overissuance of FAP benefits totaling \$684. Exhibit A, p. 57.

7. On November 28, 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, 2016 through February 28, 2017. Exhibit A, pp. 1-9.
8. 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.
9. Respondent did not have any apparent mental or physical impairment that would limit her understanding or ability to fulfill her reporting requirements.

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 [REDACTED] wages from his employment with [REDACTED] which caused Respondent's household income to be understated. Respondent's 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 \$684 of FAP benefits from December 1, 2016, through February 28, 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 a simplified reporter. Simplified reporting groups are required to report changes only when the group's actual monthly income exceeds the simplified reporting limit for the group. BAM 200 (December 2013), p. 1. In this case, Respondent was informed via the September 19, 2016 Notice of Case Action that the simplified reporting limit for her group was \$2,628. Starting in October 2016, Respondent's household income exceeded that amount every month through February 2017. Yet at no point did Respondent report to the Department that her household income exceeded the limit while still receiving benefits based on the lower income information that Respondent had provided to the Department.

Additionally, Respondent was required to completely and truthfully answer all questions in forms and in interviews. BAM 105 (April 2016), p. 9. On [REDACTED], 2017, Respondent submitted a Semi-Annual Contact Report to the Department. On the household income section of the form, Respondent indicated that her total household gross income was less than \$100 per month. No mention was made of the fact that [REDACTED] was working for [REDACTED] and earning well over 50 times that much per month. Thus, Respondent not only failed to timely report going over the simplified reporting limit, she affirmatively misrepresented [REDACTED] income and employment status when filing subsequent documents with the Department.

Respondent's failure to report a substantial increase in income to the Department must be considered an intentional misrepresentation 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. Further bolstering this conclusion is the fact that Respondent affirmatively misrepresented her household's employment and income status on the subsequent Semi-Annual Contact Report.

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.

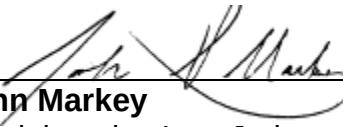
DECISION AND ORDER

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 FURTHER 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-Genesee-Union St.-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]