



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 18, 2019
MAHS Docket No.: 18-013609
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 15, 2019, from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent appeared at the hearing and represented herself. During the hearing, a 144-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-144.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup and/or collect?
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. On December 8, 2006, [REDACTED] was convicted of a controlled substance felony in Wayne County, Michigan. Exhibit A, pp. 58-60.

2. On November 28, 2007, [REDACTED] was convicted of a controlled substance felony in Wayne County, Michigan. Exhibit A, pp. 61-62.
3. Near the end of 2008, Respondent married [REDACTED].
4. On [REDACTED], 2014, Respondent filed with the Department an application for FAP benefits. Exhibit A, pp. 10-57.
5. The application asked Respondent whether anyone in the household, including [REDACTED], had been convicted of a drug-related felony, to which Respondent answered "No." Exhibit A, p. 22.
6. Respondent signed the application and thereby certified that she understood the questions in the application and that she provided true and complete information. Respondent further certified that she understood the consequences of providing false information on the application. Exhibit A, p. 38.
7. Respondent submitted another application for FAP benefits again on [REDACTED] 2017. Respondent again indicated that nobody in the household, including [REDACTED] had a drug-related felony. Exhibit A, pp. 63-111.
8. Respondent's FAP applications were approved, and the Department began issuing Respondent FAP benefits. From March 21, 2014, through September 30, 2017, Respondent received \$12,059 in FAP benefits for a group that included [REDACTED] Exhibit A, pp. 112-143.
9. The Department's OIG filed a hearing request December 10, 2018, to establish an overissuance of FAP benefits received by Respondent as a result of Respondent having allegedly committed an IPV by misrepresenting the criminal history of her group member in her applications. Exhibit A, pp. 1-8.
10. The OIG requested that Respondent be disqualified from receiving FAP benefits for a period of one year for a first IPV. Exhibit A, pp. 1-8.
11. The Department's OIG indicates that the time period it is considering the fraud period with respect to FAP is March 21, 2014, through September 30, 2017 (fraud period), during which the Department issued Respondent \$12,059 in FAP benefits. The Department alleges that Respondent's FAP group was only entitled to \$9,946 during that time period. The Department asserts that Respondent received an overissuance of FAP benefits totaling \$2,113. The Department is seeking an order requiring Respondent to repay those benefits to the Department. Exhibit A, pp. 1-8; 112-143.
12. 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), 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 in this matter is that Respondent committed an IPV with respect to FAP and should be accordingly required to pay back the alleged ill-gotten gains and be disqualified from receipt of FAP benefits for a period of one year.

Overissuance

When an ineligible client is issued benefits or an eligible client is issued more benefits than the client is entitled, the Department must attempt to recoup the overissuance. BAM 700 (July 2013), p. 1; 7 CFR 273.18.

In this case, Respondent received more FAP benefits than she was entitled to receive. An individual who has been convicted of two or more felony drug offenses which occurred after August 22, 1996, is permanently disqualified from receiving FAP benefits. BEM 203 (July 2013), p. 2; 7 CFR 273.1(b)(7)(vii). [REDACTED], a member of Respondent's FAP group, had at least two felony drug convictions which occurred after August 22, 1996, so he was permanently disqualified from receiving benefits as of the date of his second conviction, November 28, 2007. Thus, all benefits issued to Respondent on account of [REDACTED] inclusion in her FAP group after November 28, 2007, were overissued because [REDACTED] was not entitled to any benefits. The Department issued \$12,059 in FAP benefits to Respondent based on a group that included [REDACTED] from March 21, 2014, through September 30, 2017. After removing [REDACTED] from the group and recalculating Respondent's FAP benefits for that time period, the Department showed that Respondent should have only received \$9,946. The Department presented sufficient evidence to establish that Respondent received \$2,113 more in FAP benefits than she was entitled. Thus, Respondent was overissued \$2,113 in FAP benefits.

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 (July 2013) 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, p. 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 not met its burden of proof. Respondent was required to completely and truthfully answer all questions in forms and in interviews. BAM 105 (January 2014), p. 7. The Department clearly and correctly instructed Respondent of the requirement to provide truthful answers and the penalties for failing to do so.

Despite being clearly instructed to answer questions honestly and certifying that she had done so, Respondent failed to completely and truthfully answer all questions on the two applications. On each of the applications, Respondent was asked whether anyone in the household had a drug-related felony. Respondent inaccurately answered "No" to each question.

That Respondent answered the question erroneously, however, does not end the inquiry. To be subject to an intentional program violation sanction, the Department must show that Respondent *intentionally* gave false information to the Department. In this case, Respondent appeared at the hearing and credibly testified that she was unaware of her husband's drug-related felony convictions. Based on the fact that the convictions occurred before Respondent and [REDACTED] began their relationship, Respondent's testimony is certainly reasonable. Combined with Respondent's overall credibility, it is found that the Department failed to meet its burden of showing that Respondent intentionally provided false information to the Department. Thus, the Department has not established that Respondent committed an intentional program violation with respect to FAP.

Disqualification

A client who is found to have committed an IPV with respect to FAP by a court or hearing decision is disqualified from receiving FAP benefits. BAM 720, pp. 15-16; 7 CFR 273.16. 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. A ten-year disqualification is imposed if a client makes a fraudulent statement or representation regarding residence in order to receive concurrent benefits from more than one state. BAM 720, p. 16; BEM 203, p. 1; 7 CFR 273.16(b)(5).

There is no IPV with respect to FAP. Thus, Respondent is not subject to a disqualification from receiving FAP benefits.

DECISION AND ORDER

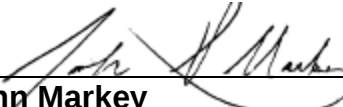
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of FAP benefits in the amount of \$2,113 that the Department is entitled to recoup and/or collect.
2. The Department has not established by clear and convincing evidence that Respondent committed an IPV with respect to his FAP benefits.
3. Respondent is not subject to a disqualification from receiving FAP benefits.

IT IS ORDERED that the Department may initiate recoupment and/or collection procedures for the total FAP overissuance amount of \$2,113 established in this matter less any amounts already recouped or collected.

IT IS FURTHER ORDERED that Respondent shall be not 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-Wayne-19-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]