



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: May 2, 2019
MOAHR Docket No.: 18-013955
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 29, 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. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e). During the hearing, 35 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-35.

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 April 12, 2018, Respondent's husband, [REDACTED], began working full-time for [REDACTED]. Exhibit A, pp. 19-21.
2. On [REDACTED] 2018, Respondent submitted to the Department an application for FAP benefits with a household consisting of herself, her husband [REDACTED] and their

child. On the application, Respondent indicated that the only income for the household came from Respondent's employment. Respondent affirmatively misrepresented [REDACTED] employment status. Exhibit A, pp. 9-16.

3. Respondent signed the application, thereby certifying that the statements on the application were true and correct to the best of her knowledge. Furthermore, Respondent was warned that if she gave false information that caused her to receive more benefits than what she was entitled to, she could be prosecuted for fraud. Exhibit A, pp. 9-16.
4. On April 23, 2018, Respondent was contacted by the Department for an interview regarding her FAP application. During the interview, Respondent once again misrepresented her household's income by stating that only she had a job and that [REDACTED] was out of work.
5. Based on Respondent's representations during the application process, the Department approved Respondent for FAP benefits. Exhibit A, p. 35.
6. On December 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 April 12, 2018, through September 30, 2018. The Department has already established a \$1,894 client error overissuance of FAP benefits received during the fraud period. Exhibit A, pp. 1-7.
7. 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.
8. 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 repeatedly misrepresenting her household's income during the application process.

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 husband's income from his employment with ██████ which caused Respondent's household income to be understated. Properly factoring into the equation the household's unreported income reduced the amount of FAP benefits that Respondent was eligible to receive. The Department had already established that Respondent was not entitled to any of the \$1,894 in FAP benefits she received from April 12, 2018, through September 30, 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 (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 required to completely and truthfully answer all questions in forms and in interviews. BAM 105 (April 2016), p. 9; 7 CFR 273.16. On April 12, 2018, Respondent submitted an application to the Department. On the household income section of the form, Respondent indicated that only she had a job. Later on the form, Respondent stated that her husband was not working. No mention was made of the fact that her husband started a job that very day. Thus, Respondent affirmatively misrepresented her household's income and employment status when filing the application with the Department. Then, nine days later, Respondent was asked about household income and employment during an application related interview. Again, Respondent lied to the Department by telling the Department that only she had income and employment when in fact her husband was earning substantial income from his employment with ██████.

Respondent's dishonest and misleading statements to the Department regarding her household's income 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 income to the Department and that reporting the income to the Department would have caused the Department to recalculate and reduce her FAP benefits. 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. A disqualified recipient remains a member of an active group as long as he or she lives with them, and other eligible group members may continue to receive benefits. 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.

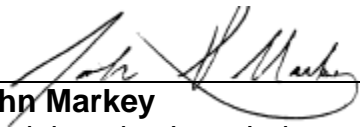
DECISION AND ORDER

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 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 of 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-Branch-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

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