



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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Date Mailed: December 26, 2018
MAHS Docket No.: 18-006886-RECON
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: John Markey

**AMENDED 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 October 3, 2018, from Lansing, Michigan. The Department was represented by Thomas Malik, 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, 59 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-59.

This amended Hearing Decision is being issued in response to the Department's Request for Reconsideration submitted on October 26, 2018. This decision corrects the issue of the calculation of an overissuance presented by the by the Department in its request for reconsideration. The only thing altered by the Amended Decision is the amount of the overissuance. In the original Decision, the amount was incorrectly stated as \$970. This Amended Decision corrects that error and correctly states that the overissuance was \$890.

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)?
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 [REDACTED], 2015, Respondent submitted to the Department an application for FAP benefits. Exhibit A, pp. 11-38.
2. Respondent signed the application and thereby certified that the information Respondent provided in the application was true and he understood his responsibility to report any changes to income or job status within 10 days after receiving his first paycheck. Further, Respondent acknowledged that he understood lying to the Department to get benefits or failing to report as required could result in termination of his benefits, disqualification of future benefits, and the initiation of fraud proceedings against him. Exhibit A, pp. 11-38.
3. On [REDACTED], 2016, the Department issued to Respondent a Redetermination, Form 1010, in order to gather relevant information regarding Respondent's ongoing eligibility for FAP benefits. Exhibit A, pp. 41-46.
4. On [REDACTED], 2016, Respondent returned the completed Redetermination to the Department and certified that all information contained within the document was accurate. Exhibit A, pp. 41-46.
5. On the returned Redetermination, Respondent was asked whether anyone in his household had income. The question was prefaced with a statement instructing Respondent to provide proof of all income his household received, including any stopped income and pay records from the previous 30 days. Respondent simply answered "No" and provided no further information in the comments section that followed the question. Exhibit A, pp. 41-46.
6. Sometime in March of 2016, Respondent began working for [REDACTED] and continued to work there regularly until at least September of 2016. Exhibit A, pp. 39-40, 47.
7. Respondent did not report his employment with or income from Mulligan's to the Department.
8. From May 1, 2016, through September 30, 2016, the Department issued Respondent \$970 of FAP benefits based on a reported income of zero. Exhibit A, pp. 48-59.
9. On June 21, 2018, the Department's OIG filed a hearing request to establish an IPV.

10. The Department's OIG requested that Respondent be disqualified from receiving FAP benefits for one year for a first alleged IPV.
11. The Department considers the alleged fraud period to be from May 1, 2016, through September 30, 2016.
12. During the alleged fraud period, Respondent was issued \$970 of FAP benefits, and the Department believes Respondent was only entitled to \$80 during that time period. Thus, the Department is seeking to establish an overissuance of FAP benefits of \$890.
13. 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.

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 1, 2016), p. 1. 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.

In this case, Respondent received more benefits than he was entitled to receive. The Department determined Respondent's eligibility without budgeting his wages from his employment with ██████████, which caused Respondent's income to be understated. Respondent's unreported income reduced the amount of FAP benefits that Respondent was eligible to receive. The Department presented sufficient evidence to establish that Respondent was overissued \$890 of FAP benefits from May 1, 2016, through September 30, 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 (January 1, 2016), page 1.

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 circumstances to the Department within 10 days of the date of the change. BAM 105 (October 1, 2016), pages 11-12. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days at the time of application. Respondent failed to report that he became employed or had any income despite continuously working and receiving paychecks from March of 2016 through at least sometime in September of 2016.

Additionally, Respondent was required to completely and truthfully answer all questions in forms and in interviews. BAM 105, page 9. On [REDACTED] 2016, Respondent submitted a Redetermination to the Department and certified that nobody in the house had a job or income. However, at that time, Respondent was working for [REDACTED] and was receiving consistent income. Thus, Respondent not only failed to timely report the change in income and employment, he affirmatively misrepresented his income and employment status when filing subsequent documents with the Department.

Respondent's failure to report the income or employment change to the Department must be considered an intentional misrepresentation 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. Further bolstering this conclusion is the fact that Respondent affirmatively misrepresented his employment and income status on the subsequent Redetermination. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his 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, pages 15-16. 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, page 16.

In this case, there is no indication in the record that Respondent was previously found guilty of 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. The Department has established by clear and convincing evidence that Respondent received an overissuance of FAP benefits in the amount of \$890 that the Department is entitled to recoup and/or collect.
3. 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.

IT IS FURTHER ORDERED that the Department may initiate recoupment and/or collection procedures for the total overissuance amount of \$890 established in this matter less any amounts already recouped or collected.

JM/dh



John Markey
Administrative Law Judge
for Nick Lyon, 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

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

DHHS

Pam Farnsworth
903 Telegraph
Monroe, MI 48161

Monroe County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Respondent

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