



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: February 1, 2019
MAHS Docket No.: 18-011275
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 hearing was held on January 2, 2019, from Lansing, Michigan.

The Department was represented by Daniel Marchetti, Regulation Agent of the Office of Inspector General (OIG). Mr. Marchetti testified on behalf of the Department. The Department submitted 55 exhibits which were admitted into evidence.

Respondent did not appear at the hearing; and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5). The record was closed at the conclusion of the hearing.

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 for one year?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on November 2, 2018, to establish an overissuance of benefits received by Respondent as a result of Respondent having failed to report her earned income and, as such, allegedly committed an IPV. [Dept. Exh. 1].
2. The OIG has requested that Respondent be disqualified for one year from receiving program benefits. [Dept. Exh. 1].
3. Respondent was a recipient of FAP benefits issued by the Department. [Dept. Exh. 5].
4. On the redetermination submitted by Respondent on [REDACTED] [REDACTED] 2015, Respondent reported that her household had no income. [Dept. Exh. 15].
5. Respondent was aware of the responsibility to report changes in her employment to the Department. [Dept. Exh. 17].
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. [Dept. Exh. 55].
7. On [REDACTED] [REDACTED] 2018, the Department received a Verification of Employment from [REDACTED] [REDACTED] showing Respondent was employed as a nail technician by the company from October 4, 2015, through June 30, 2016. [Dept. Exh. 25-29].
8. Respondent did not appear and give evidence at hearing to rebut the evidence presented by Petitioner in the Hearing Summary with attachments.
9. The OIG indicates that the time period they are considering the fraud period is December 1, 2015 through June 30, 2016. [Dept. Exh. 1, 5].
10. During the alleged fraud period, Respondent was issued \$3,577.00 in FAP benefits from the State of Michigan and was only entitled to \$1,573.00 based on her unreported income, resulting in a \$2,004.00 overissuance. [Dept. Exh. 5].
11. This was Respondent's first alleged IPV. [Dept. Exh. 1, 5].
12. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office 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), 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.

Effective October 1, 2017, the Department's Office of Inspector General requests Intentional Program Violation hearings for the following cases:

1. FAP trafficking overissuances that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or Food Assistance Program trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA) and Food Assistance Program (FAP) programs combined is \$500 or more, or
 - the total amount is less than \$500, and
 - the group has a previous Intentional Program Violation, or
 - the alleged Intentional Program Violation involves Food Assistance Program trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee. BAM 720, pp 12-13 (10/1/2017).

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client **intentionally** failed to report information **or intentionally** gave incomplete or inaccurate information needed to make a correct benefit determination, **and**

- The client was clearly and correctly instructed regarding his or her reporting responsibilities, **and**
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. 7 CFR 271.2; BAM 720, p 1 (emphasis in original).

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 (emphasis in original); see also 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, the record evidence clearly shows that Respondent was employed as a nail technician from October 4, 2015, through June 30, 2016. The Department established by clear and convincing evidence that Respondent intentionally withheld and misrepresented information that she was not working for the purpose of maintaining Food Assistance Program benefits. Therefore, the Department has established an Intentional Program Violation.

Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720, p 15. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p 17.

A client who is found to have committed an Intentional Program Violation by a court or hearing decision is disqualified from receiving program benefits. 7 CFR 273.16(b)(1); 7 CFR 273.16(b)(5); 7 CFR 273.16(b)(11); BAM 720, p 16. Clients are disqualified for ten years for a Food Assistance Program Intentional Program Violation involving concurrent receipt of benefits, and, for all other Intentional Program Violation cases involving Family Independence Program, Food Assistance Program or State Disability Assistance, for standard disqualification periods of one year for the first Intentional Program Violation, two years for the second Intentional Program Violation, and lifetime for the third Intentional Program Violation or conviction of two felonies for the use, possession, or distribution of controlled substances in separate periods if both offenses occurred after August 22, 1996. 21 USC 862a; 7 CFR 273.1(b)(7)(vii); 7 CFR 273.11(m); 7 CFR 273.11(c)(1); BEM 203, p 2; BAM 720, p 16. A disqualified member may continue as the grantee **only if** there is no other eligible adult in the group. BAM 720, p 17 (emphasis in original).

Respondent's signature on the redetermination from May 26, 2015, certifies that she was aware that fraudulent participation in FAP could result in criminal or civil or administrative claims. This Administrative Law Judge therefore concludes that the

Department has shown, by clear and convincing evidence, that Respondent committed a first intentional violation of the FAP program, resulting in a one-year disqualification.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2018).

In the above captioned matter, the record evidence shows Respondent intentionally failed to report her earned income to the Department. This resulted in an overissuance of \$2,004.00 for the fraud period of December 1, 2015, through June 30, 2016, which the Department is entitled to recoup.

DECISION AND ORDER

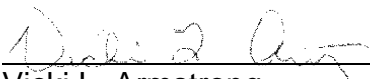
Therefore, this Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an overissuance of Food Assistance Program benefits in the amount of \$2,004.00.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$2,004.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the Food Assistance Program for one year.

VLA/nr



Vicki L. Armstrong
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

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Oakland 4 County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

DHHS

Renee Swiercz
51111 Woodward Ave 5th Floor
Pontiac, MI
48342

Respondent

[REDACTED]
[REDACTED]
[REDACTED], MI
[REDACTED]