



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

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

Date Mailed: January 9, 2019
MAHS Docket No.: 18-011432
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 January 3, 2019, from Lansing, Michigan. The Department was represented by Scott Matwiejczyk, 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, 92 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-92.

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. Respondent was an ongoing recipient of FAP benefits.
2. On [REDACTED], 2015, the Department issued to Respondent a Redetermination form to gather relevant information regarding Respondent's ongoing eligibility for FAP

benefits. Respondent was required to fill out and return the form to the Department. Exhibit A, pp. 13-18.

3. On June 29, 2015, Respondent returned to the Department the completed Redetermination. Respondent indicated that her household still consisted of herself and [REDACTED]. Respondent informed the Department that nobody in the household had a job or any income from a job. Exhibit A, pp. 13-18.
4. Respondent signed the Redetermination and thereby certified that the information Respondent provided in the application was true. Further, Respondent acknowledged that she understood lying to or misleading the Department to get benefits could result in termination of her benefits, disqualification from receipt of future benefits, and the initiation of fraud proceedings against her. Exhibit A, pp. 13-18.
5. On [REDACTED], 2016, the Department issued to Respondent a Redetermination form to gather relevant information regarding Respondent's ongoing eligibility for FAP benefits. Respondent was required to fill out and return the form to the Department. Exhibit A, pp. 49-54.
6. On [REDACTED], 2015, Respondent returned to the Department the completed Redetermination. Respondent indicated that her household still consisted of herself and [REDACTED]. Respondent informed the Department that nobody in the household had a job or any income from a job. Exhibit A, pp. 49-54.
7. On July 12, 2016, the Department issued to Respondent a Notice of Case Action informing Respondent that she was approved for FAP benefits with a group size of two based on a monthly income of \$[REDACTED]. The Notice of Case Action informed Respondent that "it is your responsibility...to notify this office within 10 days of any changes in your circumstances which may affect your eligibility for assistance. This includes changes in employment [and] income... Failure to report changes may make you liable to penalties provided by law for fraud." Accompanying the Notice of Case Action was a form titled Change Report. The Change Report form instructed Respondent to "[u]se this form to report changes about anyone in your home within 10 days of the time you learn of them." Exhibit A, pp. 55-60.
8. On [REDACTED], 2016, [REDACTED], a member of Respondent's FAP group, began working for [REDACTED] in [REDACTED] Michigan. [REDACTED] first paycheck was issued September 22, 2016. [REDACTED] regularly worked for [REDACTED] and had earnings through at least [REDACTED] 2017. Exhibit A, pp. 19-44.
9. Respondent did not report [REDACTED] employment with or income from Key to the Department.
10. From N[REDACTED], 2016, through June 30, 2017, the Department issued Respondent \$2,856 of FAP benefits based on a reported income of \$0.

Respondent was only entitled to receive \$408 during that period. The Department has already established that Respondent received an overissuance of FAP benefits totaling \$2,448. Exhibit A, pp. 71-92.

11. On November 1, 2018, the Department's OIG filed a hearing request to establish an IPV. Exhibit A, pp. 1-6.
12. The Department's OIG requested that Respondent be disqualified from receiving FAP benefits for one year for a first alleged IPV. Exhibit A, pp. 1-6.
13. The Department considers the alleged fraud period to be from [REDACTED] 2016, through June 30, 2017. Exhibit A, pp. 1-6.
14. Respondent did not have any apparent mental or physical impairment that would limit his understanding or ability to fulfill his 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 (October 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 she was entitled to receive. The Department determined Respondent's eligibility without budgeting group member [REDACTED] wages from his employment with [REDACTED] which caused Respondent's group income to be understated. When factored into the calculation, the 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 \$2,448 of FAP benefits from [REDACTED] 2016, through June 30, 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.

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 her group's circumstances to the Department within 10 days of the date of the change. BAM 105 (October 2016), pp. 11-12. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days at the time of the Redetermination and again on the Notice of Case Action mailed to Respondent just two months prior to the unreported change. Respondent failed to report that group member ██████ became employed or had any income despite him continuously working and receiving paychecks from ██████ 2016 through at least sometime in ██████ 2017.

Respondent's failure to report the income or employment change 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 regularly used her maximized FAP benefits during a period in which substantial income was coming into the home. Based on the failure to report the change to income, it is clear that Respondent had an intent to deceive the Department regarding her household income in order to maximize 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. 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 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.

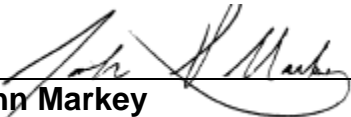
DECISION AND ORDER

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. 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/hb



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

DHHS

Alison Gordon
430 Barfield Drive
Hastings, MI 49058

Barry County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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