



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
MI [REDACTED]

Date Mailed: April 4, 2019
MAHS Docket No.: 19-000227
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

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 April 3, 2019, from Lansing, Michigan. The Department was represented by Dana Daniels, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] [REDACTED] did not appear. The hearing was held in Respondent's absence.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and State Emergency Relief (SER) 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 FAP?

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] [REDACTED] 2013, Respondent began employment at [REDACTED].
2. On [REDACTED] [REDACTED] 2013, [REDACTED] issued Respondent her first paycheck.
3. On May 3, 2013, Respondent applied for SER for electricity and heat from the Department. The application asked Respondent if she had any income from

employment, and Respondent did not disclose any employment. Respondent was still employed at [REDACTED] at the time.

4. Respondent did not have any apparent physical or mental impairment that would limit her understanding or her ability to fulfill her responsibilities to the Department.
5. On May 7, 2013, Respondent applied for SER for water/sewer from the Department. The application asked Respondent if she had any income from employment, and Respondent did not disclose any employment. Respondent was still employed at [REDACTED] at the time.
6. On May 16, 2013, the Department issued \$309.82 in SER payments to Respondent for electricity and heat.
7. On June 19, 2013, Respondent applied for SER for electricity, heat, repairs, and cooking gas from the Department. The application asked Respondent if she had any income from employment, and Respondent did not disclose any employment. Respondent was still employed at A Clean Cigarette at the time.
8. On July 5, 2013, the Department issued \$146.41 in SER payments to Respondent for electricity and heat.
9. On November 15, 2013, the Department issued \$464.94 in SER payments to Respondent for water/sewer, electricity, and heat.
10. On December 10, 2013, Respondent applied for SER for electricity, heat, and cooking gas from the Department. The application asked Respondent if she had any income from employment, and Respondent did not disclose any employment. Respondent was still employed at [REDACTED] at the time.
11. On December 17, 2013, Respondent applied for FAP benefits from the Department. The application asked Respondent if she had any income from employment, and Respondent did not disclose any employment. Respondent was still employed at [REDACTED] at the time.
12. The Department issued FAP benefits to Respondent without taking into account her income from employment.
13. On January 9, 2014, Respondent applied for SER for water/sewer from the Department. The application asked Respondent if she had any income from employment, and Respondent did not disclose any employment. Respondent was still employed at [REDACTED] at the time.
14. On January 21, 2014, Respondent applied for SER for electricity, heat, and electricity reconnection from the Department. The application asked Respondent if

she had any income from employment, and Respondent did not disclose any employment. Respondent was still employed at [REDACTED] at the time.

15. On December 4, 2014, the Department issued \$137.75 in SER payments to Respondent for heat.
16. The Department investigated Respondent's case and determined that Respondent was overissued benefits because she had unreported income.
17. The Department contacted Respondent to obtain her explanation for the unreported income, but the Department was unable to obtain an explanation from Respondent.
18. On January 3, 2019, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
19. The OIG requested Respondent be disqualified from FAP for 12 months for a first IPV. The OIG requested recoupment of \$4,513.00 in FAP benefits issued from February 2014 through June 2015, and the OIG requested recoupment of \$1,058.92 in SER payments issued from May 2013 through December 2014.
20. A notice of hearing was mailed to Respondent at her last known address and it was not returned by the United States Postal Service 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 Supplemental Nutrition Assistance Program (SNAP) is a federal food assistance program designed to promote general welfare and to safeguard well-being by increasing food purchasing power. 7 USC 2011 and 7 CFR 271.1. The Department administers its Food Assistance Program (FAP) pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

Overissuance

A recipient claim is an amount owed because of benefits that were overpaid or benefits that were trafficked. 7 CFR 273.18(a)(1). When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (January 1, 2018), p. 1.

The Department presented sufficient evidence to establish that Respondent received more FAP benefits than she was entitled to receive because her household had unreported income. FAP benefits are income-based, so the amount of income a household has determines the household's FAP benefit. Here, the Department overissued FAP benefits to Respondent because the Department issued FAP benefits to Respondent without budgeting Respondent's income from employment, which would have reduced her household's FAP benefit amount. The Department presented sufficient evidence to establish that Respondent was overissued \$4,513.00 in FAP benefits from February 2014 through June 2015.

The Department did not present sufficient evidence to establish that Respondent received more SER payments than she was entitled to receive. The Department did not present any evidence to establish that Respondent's income exceeded the Department's SER program limits or that Respondent was otherwise ineligible for the SER payments she received. Rather, the Department asserted that Respondent was overissued SER because she withheld her income information on her applications. Although Respondent did withhold her income information, the Department did not cite any authority that indicates an individual is not entitled to receive SER payments when she withholds income information.

Intentional Program Violation

An intentional program violation (IPV) "shall consist of having intentionally: (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards." 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. 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, I find that the Department has met its burden. An applicant for assistance is required to provide complete and truthful information on her application. BAM 105 (January 1, 2019), p. 19. Respondent did not provide complete and truthful information on her application for FAP benefits. The application asked Respondent about her

employment income, and Respondent did not disclose her employment even though she was employed at the time. Respondent did not provide any explanation for failure to disclose her employment on her application. Respondent's failure to disclose her employment on her application must be considered an intentional misrepresentation to maintain or obtain benefits from the Department since Respondent knew or should have known that she was required to disclose her employment to the Department and that disclosing it would have caused her benefits to be reduced. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to provide complete and truthful information.

Disqualification

In general, individuals found to have committed an intentional program violation through an administrative disqualification hearing shall be ineligible to participate in FAP: (i) for a period of 12 months for the first violation, (ii) for a period of 24 months for the second violation, and (iii) permanently for a third violation. 7 CFR 273.16(b). Only the individual who committed the violation shall be disqualified – not the entire household. 7 CFR 273.16(b)(11).

In this case, there is no evidence that Respondent has ever been 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 12-month disqualification from FAP.

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 did not receive an overissuance of SER payments, but Respondent did receive an overissuance of FAP benefits in the amount of \$4,513.00 that the Department is entitled to recoup.
2. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.
3. Respondent should be disqualified from FAP.

IT IS ORDERED THAT the Department may initiate recoupment procedures for FAP benefits in the amount of \$4,513.00 in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall be disqualified from FAP for a period of 12 months.

JK/nr



Jeffrey Kemm
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

Genesee Union St. County DHHS- via
electronic mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

DHHS

Tamara Morris
125 E. Union St 7th Floor
Flint, MI
48502

Respondent

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