



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] MI [REDACTED]

Date Mailed: May 14, 2019
MOAHR Docket No.: 19-001269
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 Titles 7 and 42 of the Code of Federal Regulations (CFR), particularly 7 CFR 273.16 and 42 CFR 431.230(b), and with Mich Admin Code, R 400.3130. After due notice, a telephone hearing was held on May 9, 2019, from Lansing, Michigan. The Department was represented by Derrick Gentry, 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 Family Independence Program (FIP) and 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 FIP and 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 August 1, 2014, Respondent was determined to have committed a first IPV related to FAP benefits.
2. On [REDACTED] [REDACTED] 2015, Respondent began employment at [REDACTED].

3. On [REDACTED] [REDACTED] 2015, Respondent applied for FIP and FAP assistance from the Department. Respondent represented that her household did not have any income from employment. The Department instructed Respondent to report all changes which could affect her eligibility for assistance to the Department within 10 days of the date of the change, including changes in employment and income.
4. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her responsibilities to the Department.
5. On [REDACTED] [REDACTED] 2016, Respondent applied for FAP benefits from the Department. Respondent represented that her household did not have any income from employment.
6. On [REDACTED] [REDACTED] 2016, Respondent applied for FIP assistance from the Department. Respondent represented that her household did not have any income from employment. The Department instructed Respondent to report all changes which could affect her eligibility for assistance to the Department within 10 days of the date of the change, including changes in employment and income.
7. On [REDACTED] [REDACTED] 2016, Respondent began employment at [REDACTED] [REDACTED]
8. On [REDACTED] [REDACTED] 2016, [REDACTED] issued Respondent her first paycheck.
9. Respondent did not report her employment at [REDACTED] to the Department.
10. The Department issued FIP and FAP benefits to Respondent without taking into consideration her income from employment.
11. The Department investigated Respondent's case and discovered that she had unreported income which caused the Department to overissue her FIP and FAP benefits.
12. The Department attempted to contact Respondent to obtain her explanation, but the Department was unable to obtain her explanation.
13. On February 4, 2019, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of FIP and FAP benefits and that Respondent committed an IPV.
14. The OIG requested recoupment of \$2,368.00 of FIP benefits issued from May 2015 through November 2015 and a \$6,708.00 of FAP benefits issued from May 2015 through May 2017. The OIG requested that Respondent be disqualified for 12 months from FIP for a first IPV related to FIP and 24 months for FAP for a second IPV related to FAP.

15. 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

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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.

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

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 1, 2018), p. 1. When a client group receives more benefits than 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. Respondent failed to report her income from employment to the Department, so the Department did not budget her income when it calculated the benefits she was eligible for. This resulted in the Department issuing more FIP and FAP benefits to Respondent than she was entitled to receive.

The Department presented sufficient evidence to establish that Respondent was overissued \$2,368.00 in FIP benefits from May 2015 through November 2015. A group is only eligible for FIP when the group has a financial need as determined by a deficit test that subtracts the group's income from the FIP payment standard. BEM 518 (October 1, 2015), p. 1. In 2015, the payment standard was \$597.00 for a group size of four. RFT 210 (December 1, 2013). Respondent had budgetable employment income which reduced the FIP payment she was eligible for from May 2015 through November 2015. The Department presented sufficient evidence to establish that Respondent was overissued \$2,368.00 in FIP assistance from May 2015 through November 2015.

The Department presented sufficient evidence to establish that Respondent was overissued FAP benefits (of at least \$500.00) because Respondent had unreported income from employment. However, the Department did not present sufficient evidence to establish the amount of the overissuance. The Department presented overissuance

budgets prepared by a recoupment specialist who was not present to testify. The budgets showed an amount of \$[REDACTED] budgeted for unearned income for the months of May 2015 through May 2016 (excluding June 2015), and the budgets described this unearned income as "FIP/SA." The Department did not present any evidence to establish that Respondent received the unearned income that was budgeted. Additionally, if the Department was budgeting Respondent's FIP, then the Department should have adjusted the amount of the income from FIP to reflect the correct FIP amount Respondent was eligible for based on her unreported income.

For these reasons, I must find that Respondent received a FAP overissuance (of at least \$500.00) but that there is insufficient evidence to establish the amount of the overissuance. The Department shall review its FAP overissuance budget, determine its overissuance in accordance with this decision, and then issue a new notice of overissuance to Respondent pursuant to 7 CFR 273.18(a)(3)(iii).

Intentional Program Violation

An IPV exists when all of the following occur: (1) The client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and (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 their reporting responsibilities. BAM 720 (October 1, 2017) 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, p. 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, I find that the Department has met its burden. Respondent was required to provide complete and truthful information to the Department. BAM 105 (January 1, 2019), p. 11. Respondent was also required to report changes in her circumstances to the Department within 10 days of the date of the change. BAM 105, p. 11. Respondent withheld information about her income from employment when she failed to disclose it on her application(s) and when she failed to report it to the Department. Respondent's conduct must be considered an intentional misrepresentation to obtain and maintain her FIP and FAP benefits since Respondent knew or should have known that she was required to report her income to the Department and that reporting it would have caused a reduction in her benefits. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her responsibilities to the Department.

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, p. 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. A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, Respondent was previously found to have committed an IPV related to FAP benefits. This is Respondent's second IPV related to FAP benefits, so she is subject to a two-year disqualification from FAP. This is Respondent's first IPV related to FIP, so she is subject to a one-year disqualification from FIP.

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 received an overissuance of FIP and FAP benefits.
2. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.
3. Respondent should be disqualified from FIP for one year.
4. Respondent should be disqualified from FAP for two years.


IT IS ORDERED that the Department may initiate recoupment procedures for the \$2,368.00 FIP overissuance.

IT IS ORDERED that the Department shall initiate a review of the FAP overissuance budget to determine the amount of the FAP overissuance and then issue a new notice to Respondent. The Department shall begin to implement this order within 10 days.

IT IS ORDERED that Respondent shall be disqualified from FIP for a period of one year. The Department shall begin to implement this order within 10 days.

IT IS ORDERED that Respondent shall be disqualified from FAP for a period of two years. The Department shall begin to implement this order within 10 days.

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 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 Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

LaClair Winbush
17455 Grand River
Detroit, MI
48227

Wayne 31 County DHHS- via electronic
mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

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