



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]
Date Mailed: June 7, 2019
MOAHR Docket No.: 19-001539
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 May 29, 2019, from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). 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).

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Did Respondent receive an overissuance (OI) of FAP benefits that the Department is entitled to recoup?

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 a recipient of \$504 in monthly FAP benefits issued by the Department from May 2018 to August 2018 (Exhibit A, pp. 52-53). The calculation of FAP benefits was based on Respondent's receipt of \$0 in income.
2. Respondent was employed by, and received income from, [REDACTED] (Employer 1) from March 13, 2018 to May 6, 2018 and [REDACTED] (Employer 2) from June 18, 2018 to September 7, 2018 (Exhibit A, pp. 49, 50-51).
3. Respondent was aware of the responsibility to report changes in employment and income.
4. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. The Department's OIG filed a hearing request on January 23, 2019, alleging that Respondent committed an IPV concerning her FAP benefits by failing to report her employment with Employer 1 and Employer 2 and, because her employment income was not considered in determining his FAP eligibility and allotment at the time of issuance, she received a FAP OI totaling \$525.
6. Respondent has no prior FAP IPV disqualifications.
7. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services 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.

IPV and Disqualification

Effective October 1, 2014, the Department's OIG requests IPV hearings for cases involving alleged fraud of FAP benefits resulting in a FAP OI in excess of \$500. BAM 720 (October 2017), p. 5. An IPV occurs when a recipient of Department benefits intentionally (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation FAP, FAP federal regulations, or any State statute for the purpose of using, presenting, transferring,

acquiring, receiving, possessing or trafficking of FAP benefits or electronic benefit transfer (EBT) cards. 7 CFR 273.16(c).

To establish an IPV, the Department must present clear and convincing evidence that the household member committed, and intended, to commit the IPV. 7 CFR 273.16(e)(6); BAM 720, p. 1. 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; *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533, 541 (2010). For an IPV based on inaccurate reporting, Department policy requires that the individual also have been clearly and correctly instructed regarding his or her reporting responsibilities and have no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 720, p. 1.

In this case, the Department alleges that Respondent committed an IPV because she intentionally withheld information concerning her employment income in order to receive or maintain FAP benefits from the State of Michigan. Employment income received by the client is considered in the calculation of a client's FAP eligibility and amount. 7 CFR 273.9; 7 CFR 273.10(c); BEM 556 (July 2013), pp. 2-6. FAP recipients who are not simplified reporters are required to report starting employment. 7 CFR 273.12(a)(1); BAM 105 (July 2015), pp. 10-11.

In support of its IPV case against Respondent, the Department presented (i) an application Respondent submitted to the Department on September 29, 2017 in which she reported no employment (Exhibit A, pp. 11-37); (ii) an application Respondent submitted to the Department on September 18, 2018 in which she reported no employment and denied having any employment in the 30 days prior to the application (Exhibit A, pp. 38-44); (iii) income information from Employer 1 showing that Respondent received employment income between March 22, 2018 and May 10, 2018 (Exhibit A, p. 49); (iv) a response to the Department's subpoena request showing that Respondent had earnings from Employer 2 from June 29, 2018 to September 14, 2018 (Exhibit A, pp. 50-51); (v) a benefit summary inquiry showing that Respondent received FAP benefits in May 2018 and August 2018 (Exhibit A, pp. 52-53); and (vi) FAP OI budgets for May 2018, August 2018 and September 2018 showing the calculation of FAP benefits Respondent would have been eligible to receive if the alleged unreported income had been included in determining her FAP eligibility and allotment at the time of issuance (Exhibit A, pp. 54-61).

The evidence presented showed that Respondent was employed by Employer 1 and Employer 2 while receiving FAP benefits, but she did not report her employment to the Department and failed to disclose to the Department in her September 18, 2018 application that she had been employed in the 30 days preceding the date of application. The Department alleges that, as a result of Respondent's failure to disclose her employment income, she received a FAP OI of \$525, with \$410 in FAP benefits overissued for August 2018 and \$115 overissued for May 2018. A review of issuance summary shows that, based on Respondent's income, in September 2018 she was

underissued \$77. When the overissued FAP benefits are reduced by the \$77 underissuance, the resulting FAP overissuance is \$448. See BAM 406 (July 2013). Because this sum is below \$500, the Department has failed to establish the threshold to pursue an IPV case. Therefore, Respondent is not subject to a disqualification from the FAP program. See 7 CFR 273.16(b)(1); BAM 720, p. 16.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. 7 CFR 273.18(a)(2); BAM 700, p. 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. 7 CFR 273.18(c)(1); BAM 720, p. 8; BAM 715 (October 2017), p. 6; BAM 705 (October 2018), p. 6.

In this case, the Department alleges that, although Respondent received FAP benefits totaling \$1008 for May 2018 and August 2018, she was eligible for only \$389 in FAP benefits in May 2018 and \$94 in August 2018, resulting in a FAP OI of \$525. To establish the FAP OI amount, the Department presented FAP OI budgets for May 2018 and August 2018 to show the FAP benefits Respondent was eligible to receive if her unreported income had been included in the calculation of her FAP eligibility for each month. A review of the FAP OI budgets for these months shows that the Department properly considered Respondent's actual income for those months, and, due to a child support sanction (as reflected in the budgets), pro-rated the income based on the remaining three members of the FAP group. BEM 550 (January 2017), pp. 3-4; BAM 720, p. 10. Because Respondent did not timely report her employment income, she was not eligible for the 20% earned income deduction in the calculation of the household's net income. 7 CFR 273.18(c)(1); BAM 720, p. 10. A review of Respondent's recalculated income in the FAP OI budgets shows that, when Respondent's income from employment at Employer 1 and Employer 2 is taken into consideration in determining her FAP eligibility, she was overissued \$525 in FAP benefits. When this amount is reduced by the \$77 she was underissued in September 2018, the total overissuance amount that the Department is entitled to recoup and/or collect from Respondent is \$448.

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. Because the FAP overissuance in this case does not exceed \$500, the Department may not pursue an IPV case against Respondent.
2. Respondent did receive an OI of FAP benefits in the amount of \$448.

The Department is **ORDERED** to reduce the FAP OI to \$448 and initiate recoupment and/or collection procedures for the amount of \$448 in accordance with Department policy, less any amounts the Department has already collected and/or recouped.

The Department's request to disqualify Respondent from FAP is **DENIED**.



AE/tm

Alice C. Elkin

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

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

cc: IPV-Recoupment Mailbox

[REDACTED]