



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.: 19-001768
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. From November 1, 2016 to March 31, 2017 (fraud period), Respondent was a recipient of \$118 in monthly FAP benefits issued by the Department (Exhibit A, p. 58).

2. During the fraud period, the Department was budgeting \$1,462 in monthly income based on Respondent's receipt in \$340 in weekly disability income.
3. Respondent was aware of the responsibility to report changes in income (Exhibit A, p. 16).
4. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. Beginning September 2016, Petitioner had an increase in her weekly income (Exhibit A, p. 36).
6. In a redetermination she submitted to the Department on February 27, 2017, Respondent reported no change in her weekly income (Exhibit A, p. 54).
7. The Department's OIG filed a hearing request on February 1, 2019, alleging that Respondent committed an IPV concerning her FAP benefits by failing to report the increase in income, and as a result she was issued \$558 in FAP benefits more than she was eligible to receive if her income had been properly budgeted.
8. Respondent has no prior FAP IPV disqualifications.
9. 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.

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 an increase in disability income she received. The evidence showed that the Department had been budgeting \$1,462 in monthly income based on Respondent's reporting that she received \$340 weekly in disability income (Exhibit A, pp. 40, 42, 44, 46, 48). Regular wages an individual receives while on sick leave are earned income; other disability payments are unearned income. BEM 500 (July 2017), p. 13.

In support of its IPV case against Respondent, the Department presented a print out of Respondent's employment information as reported by her employer to the Work Number, a Department-accessible database in which employers voluntarily report employee information (Exhibit A, pp. 34-37). The Work Number report showed how much Respondent received weekly from the employer during the fraud period (Exhibit A, p. 36). The Department also presented FAP overissuance budgets for each month during the fraud period showing the calculation of FAP benefits Respondent would have been eligible to receive if the alleged unreported portion of her income had been included in determining her FAP eligibility and allotment at the time of issuance (Exhibit A, pp. 40-49).

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.

Department policy provides that, if improper reporting or budgeting of income caused the overissuance, actual income for the overissuance month for that income source must be used. BAM 720, p. 10. Any income properly budgeted in the issuance budget must remain the same in that month's corrected budget. BAM 720, p. 10. A review of the November 2016 FAP OI budget shows that the Department properly added together Respondent's actual income received that month (\$2,145), and, because the Department had been budgeting \$1,462, determined that the unreported income was

\$683, the difference between the \$2,145 Respondent actually received and the \$1,462 that was budgeted. Because Respondent did not timely report the increased income, she was not eligible for the 20% earned income deduction on the \$683 in unreported income. 7 CFR 273.18(c)(1); BAM 720, p. 10. A review of the remainder of the budget shows that the Department properly concluded that Respondent was eligible for only \$16 rather than the \$118 she received, resulting in Respondent receiving \$102 more in FAP benefits than she was eligible to receive.

However, a review of the remaining FAP overissuance budgets shows that the Department did **not** properly calculate Respondent's income for determining the overissuance. For December 2016, January 2017, February 2017, and March 2017, the Department added together the actual income Respondent received each month **plus** the \$1,462 it had been budgeting based on her reported income. Additionally, the Department did not include the 20% earned income deduction for the \$1,462 that was reported properly and budgeted in the December 2016, January 2017, and February 2017 budgets. As a result of these errors, Respondent's total income each of these months in the fraud period was substantially more than Respondent actually received that month. Because the Department relied on inaccurate income amounts, it has failed to establish any FAP overissuances for December 2016 through March 2017.

Therefore, the Department has established a FAP overissuance of \$102 for November 2016 that it is entitled to recoup or collect from Respondent.

Because an IPV case requires that an overissuance of FAP benefits in excess of \$500, the Department has failed to establish the threshold for 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.

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 \$102.

The Department is **ORDERED** to reduce the FAP OI to \$102 and initiate recoupment and/or collection procedures for the amount of \$102 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

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

DHHS

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

Respondent

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

cc: IPV-Recoupment Mailbox

[REDACTED]