



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

Date Mailed: July 26, 2019
MOAHR Docket No.: 19-001985
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 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 July 15, 2019, from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and represented herself. During the hearing, a 68-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-68.

ISSUES

1. Did Respondent receive an overissuance (OI) of 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) with respect to FAP?
3. 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. In late October 2015, Respondent applied for a job with [REDACTED]
2. Shortly thereafter, on [REDACTED], 2015, Respondent applied for FAP benefits from the Department. Respondent indicated on the application that she was living in a

house with her sister, [REDACTED], and that the two of them buy and prepare food separately from one another. Respondent further indicated that the only income for the entire house consisted of \$1,700 per month that [REDACTED] earned from her job at [REDACTED] Exhibit A, pp. 12-33.

3. Respondent signed the application, thereby certifying that all information contained in the application was true to the best of her knowledge. Respondent's signature further certified that she received, read, and understood the information contained in a pamphlet titled "Important Things to Know." The Important Things to Know pamphlet informed Respondent that she had to report changes in income within ten days of receiving a first paycheck and that failure to do so would potentially result in fraud charges being assessed against her. Exhibit A, pp. 24-25.
4. On November 13, 2015, the Department issued to Respondent a Notice of Case Action informing Respondent that she was approved for monthly FAP benefits in the amount of \$194. The Notice of Case Action stated that her monthly benefits were based on a monthly income of \$0. Further, Respondent was informed that she had a responsibility to report any changes to his income within 10 days of the change. Respondent was informed that failure to report changes may make her liable for penalties for fraud. Exhibit A, pp. 34-37.
5. The same day the Notice of Case Action was issued, Respondent began working for [REDACTED] the job she applied for shortly prior to applying for FAP benefits. Respondent regularly worked at that job through at least September 2016. Exhibit A, p. 38.
6. Respondent never reported her income or employment with [REDACTED] to the Department.
7. Respondent was approved for and received FAP benefits based on the information Respondent provided. From January 1, 2016 through September 30, 2016, Respondent received FAP benefits that were calculated without consideration of her concealed income from Media Star Promotions. Exhibit A, pp. 1-9; 39-41.
8. On February 15, 2019, the Department's OIG filed a hearing request to establish an IPV with respect to FAP. The Department's OIG requested that Respondent be disqualified from receiving FAP benefits for one year for a first alleged IPV. The Department considers the alleged fraud period to be January 1, 2016 through September 30, 2016. During the fraud period, the Department issued to Respondent \$1,738 in FAP benefits. The Department is seeking to establish a \$1,540 overissuance of FAP benefits received during the fraud period. Exhibit A, pp. 1-9, 42-60.
9. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Service as undeliverable.

10. Respondent did not have any apparent mental or physical impairment that would limit her understanding or ability to fulfill her 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.

The Department's position is that Respondent committed an IPV with respect to FAP by failing to report a change in income leading to the overissuance of FAP benefits. The Department contends that the material omission led the Department to overissue to Respondent \$1,540 in FAP benefits for the period from January 1, 2016 through September 30, 2016.

Overissuance

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (January 2016), p. 1; 7 CFR 273.18. 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; 7 CFR 273.18.

In this case, Respondent received more benefits than she was entitled to receive. The Department determined Respondent's eligibility without budgeting Respondent's concealed income from her employment with [REDACTED], which caused Respondent's household income to be understated. Properly factoring into the equation the household's unreported income reduced the amount of FAP benefits that Respondent was eligible to receive. The Department established that Respondent was only entitled to \$198 of FAP benefits from January 1, 2016, through September 30, 2016. The Department issued to Respondent a total of \$1,738 in FAP benefits during that period. Thus, the Department has shown that it overissued \$1,540 of FAP benefits from January 1, 2016, through September 30, 2016.

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; 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. 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 household's circumstances to the Department within 10 days of the date of the change. BAM 105 (April 2014), pp. 11-12; 7 CFR 273.12(a)(1)-(2). The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days on at least two separate documents that are part of the record in this matter. Respondent failed to report that she became employed or had any new income despite her continuously working and receiving paychecks from November 18, 2015 through at least the end of the fraud period.

Respondent's failure to report the income or employment change to the Department must be considered an intentional omission 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. Respondent was repeatedly informed that she was required to report any changes to her income and given clear instructions on how to do so. Respondent applied for the job with [REDACTED]. Within a couple of days, Respondent then applied for FAP benefits from the Department, indicating that she had no employment or income. Within a couple of weeks, Respondent was then working regularly and earning income while receiving FAP benefits that did not take into account that income and employment. The timing of the application for the job, the application for the benefits, then the start of the job strongly suggests that this was a calculated effort to defraud the FAP. It is clear that Respondent knew of the reporting and disclosure requirements and had an intent to deceive the Department regarding her income in order to maximize her FAP benefits. 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; 7 CFR 273.16(b). 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 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 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. The Department has established by clear and convincing evidence that Respondent received an overissuance of FAP benefits in the amount of \$1,540 that the Department is entitled to recoup and/or collect.
3. Respondent is subject to a one-year disqualification from receiving FAP benefits.

IT IS ORDERED that the Department shall initiate recoupment/collection procedures for the amount of \$1,540 in accordance with Department policy, less any amounts already recouped or collected.

IT IS FURTHER ORDERED that Respondent shall be disqualified from receiving FAP benefits for a period of one year.

JM/cg



John Markey
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 Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Email:

MDHHS-Oakland-3-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]