



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.: 19-002782
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 May 9, 2019, from Lansing, Michigan. The Department was represented by Quocshawn Parker, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

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)?
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] 2016, Respondent completed a redetermination at the Department's request. Respondent represented that her household was composed of herself and two children. Respondent represented that she had income from work.
2. On [REDACTED] [REDACTED] 2016, Respondent [REDACTED] [REDACTED]

3. [REDACTED] earned income from employment.
4. In [REDACTED] 2017, Respondent's husband moved into Respondent's home.
5. Respondent did not report to the Department that her husband moved into her home.
6. In [REDACTED] 2017, Respondent's husband moved out of Respondent's home.
7. On [REDACTED] [REDACTED] 2017, Respondent completed a redetermination at the Department's request. Respondent represented that her household was composed of herself and two children. Respondent represented that she had income from home provider work.
8. On [REDACTED] [REDACTED] 2017, Respondent applied for assistance from the Department, including FAP benefits. In the application, Respondent represented that her household was composed of herself and two children. Respondent represented that her household did not have any income from work. 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 income and household composition.
9. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her responsibilities to the Department.
10. In 2017, Respondent worked for [REDACTED]
11. Respondent did not report her income from [REDACTED] to the Department.
12. The Department issued FAP benefits to Respondent without budgeting her income from W [REDACTED]
13. The Department investigated Respondent's case and determined that she was overissued FAP benefits because she had unreported income.
14. On March 15, 2019, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
15. The OIG requested Respondent be disqualified from FAP for 12 months for a first IPV. The OIG requested recoupment of \$4,550.00 in FAP benefits issued from January 2017 through November 2017.
16. 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 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

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 (October 1, 2018), p. 1.

In this case, Respondent received more benefits than she was entitled to receive because she 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 her income from employment at [REDACTED]

Although the Department presented sufficient evidence to establish that Respondent received an overissuance, the Department did not present sufficient evidence to establish the amount of the overissuance. The Department's only evidence of the amount of the overissuance was budgets prepared by a recoupment specialist who was not present to testify. The Department did not establish that it used the correct amounts in its budgets. Specifically, the Department did not present sufficient evidence to support the amount it used for Respondent's unreported income from employment, and the Department did not present sufficient evidence to support the use and amount of Respondent's husband's income.

Respondent's unreported income shown in the Department's budgets was not supported by the Department's evidence. The Department used an unreported income of \$800.00 paid biweekly beginning January 3, 2017, as Respondent's income from employment at [REDACTED]. There was no evidence that Respondent's biweekly payments began on January 3, 2017, the \$800.00 biweekly amount was inconsistent with Respondent's affidavit and her employer's written statement, and the \$800.00 biweekly amount did not appear to account for a deduction for expenses even though Respondent was paid as an independent contractor and would have been eligible for a deduction of expenses.

Respondent's husband's income shown in the Department's budgets was not supported by the Department's evidence either. The Department used Respondent's husband's income for each month from January 2017 through November 2017, but the Department did not present sufficient evidence to establish that he was in Respondent's household during this time. Respondent's affidavit stated that her husband was not living with her as of March 2017, and the Department did not present any evidence to contradict Respondent's statement. Since the Department did not have any evidence that Respondent's husband was living with her during the relevant time frame, the Department should not have budgeted his income from March 2017 through November 2017. The Department also did not present sufficient evidence to establish how it determined the amount of Respondent's husband's monthly income it used for January and February 2017.

For these reasons, I must find that Respondent received an overissuance (of at least \$500.00) but that there is insufficient evidence to establish the amount of the overissuance. The Department shall review its 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 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. Respondent was required to completely and truthfully answer all questions. BAM 105 (October 1, 2016), p. 9. Respondent did not answer all questions completely and truthfully because she withheld information about her employment at [REDACTED] when she completed her redetermination(s) and submitted her application. Respondent did not provide any explanation for withholding this information from the Department. Respondent's conduct 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 all her income to the Department and that disclosing her income 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 fulfill her reporting requirement.

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 received an overissuance of FAP benefits.
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 shall initiate a review of its overissuance budget to determine the amount of the overissuance and then issue a new notice to Respondent. The Department shall begin to implement this order within 10 days.

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

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Wayne 19 County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

DHHS

Susan Noel
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Respondent

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[REDACTED]