



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: August 15, 2019
MOAHR Docket No.: 19-003883
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 August 5, 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 59-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-59.

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) with respect to the Food Assistance Program (FAP)?
2. 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. On [REDACTED], 2016, Respondent submitted to the Department an application for FAP benefits for himself. The following day during an interview with the Department, Respondent informed the Department that his two children lived with him. Exhibit A, pp. 11-36.

2. Respondent signed the Redetermination, thereby certifying the truth of the information contained therein and that he read, understood, and agreed to abide by the rules and regulations applicable to the program, including the requirement that he report any changes to household circumstances within ten days of the change. Exhibit A, pp. 17-19.
3. On September 19, 2016, the Department issued to Respondent a Notice of Case Action approving Respondent's application and informing Respondent that his FAP benefits were being issued on the basis of Respondent being in a three-person group including Respondent and his two children. Respondent was once again informed that he had an obligation to report changes to his household makeup within ten days of someone leaving the house. Exhibit A, pp. 37-42.
4. On or about [REDACTED], 2016, Respondent executed a document stating that he was granting to his sister, [REDACTED], guardianship of Respondent's two children that were included on Respondent's FAP case with the Department. Shortly thereafter, [REDACTED] added the two children to her assistance case in Missouri. Exhibit A, pp. 43-48.
5. Respondent never reported to the Department that his children were out of his home and continued to receive FAP benefits for a group of three. Respondent received those benefits until at least July 31, 2017. Exhibit A, pp. 44-45.
6. On April 8, 2019, the Department's OIG filed a hearing request to establish an IPV with respect to FAP and seeks an order disqualifying Respondent from FAP for a period of one year. The Department considers the alleged fraud period to be December 1, 2016, through July 31, 2017. During that time, the Department issued to Respondent \$3,656 in FAP benefits based on Respondent's purported group size of three. The Department asserts that the two children were not in the home during that time and that Respondent should have only received \$1,552 in FAP benefits on the basis of a group size of one. The Department indicated that it had already established the overissuance of FAP benefits of \$2,104. Exhibit A, pp. 1-9; 49-59.
7. 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.

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 allegedly failing to report when his two children moved out of the home, causing the Department to overissue Respondent FAP benefits for the period from December 1, 2016 through July 31, 2017.

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 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. To be eligible under the same FAP benefits case, individuals must be a member of the same household. BEM 211 (October 2015), p. 1.

In this case, Respondent's group received more benefits than it was entitled to receive. Respondent's children moved out of the household sometime in October 2016, at the latest. However, the Department continued to provide Respondent FAP benefits on the basis of Respondent's household including both of those children through July 31, 2017. Because the children were not a part of the household, Respondent should have been issued FAP benefits on the basis of a group size of one. Thus, Respondent was overissued FAP benefits each of those months from December 1, 2016 through July 31, 2017. The overissuance value was shown to be \$2,104. Prior to the hearing in this matter, the Department had already established that Respondent received an overissuance of FAP benefits of \$2,104.

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)).

Respondent was required to report changes in his circumstances to the Department within 10 days of the date of the change. BAM 105 (October 2016), pp. 11-12. Furthermore, Respondent was required to truthfully and completely answer all questions on forms and interviews. BAM 105, p. 9. The Department alleges that Respondent breached these duties by failing to report his two children not being in the home after they moved shortly following Respondent's initial application for FAP benefits.

The Department has met its burden of proof in this matter. Respondent was reminded both on his application for benefits and on the Notice of Case Action informing him of his benefits that he was required to report any changes to the household makeup within ten days of the change. Furthermore, Respondent was clearly informed that his monthly FAP benefits were being calculated based on the inclusion of his two children in his household. Just about one month after filing an application for benefits and being approved for benefits on the basis of those children being in the home, Respondent executed a document granting guardianship of the two children to his out-of-state sister. Despite explicitly acknowledging that the children were no longer in his home, Respondent continued to receive FAP benefits on their behalf until at least July 31, 2017. At no point did Respondent inform the Department of the change. Respondent's failure to inform the Department of the change is found to be an intentional action calculated to mislead the Department into issuing to him benefits to which he was not entitled and constitutes an IPV with respect to FAP.

Disqualification

A client who is found to have committed an IPV with respect to FAP by a court or hearing decision is disqualified from receiving FAP benefits. BAM 720, pp. 12-13; 7 CFR 273.16. 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. 13. A ten-year disqualification is imposed if a client makes a fraudulent statement or representation regarding residence in order to receive concurrent benefits from more than one state. BAM 720, p. 13; BEM 203, p. 1; 7 CFR 273.16(b)(5).

There is no evidence on the record that Respondent has previously been found to have committed an IPV with respect to FAP. Thus, Respondent is subject to a one-year disqualification from receiving FAP benefits.

DECISION AND ORDER

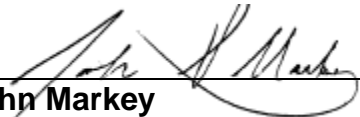
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to his FAP benefits.

2. Respondent is subject to a one-year disqualification from receiving FAP benefits.

IT IS 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-Wayne-18-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

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