



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.: 19-003886
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 111-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-111.

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. On [REDACTED] 2015, Respondent submitted to the Department an application for FAP benefits for a group that included herself and her two children, [REDACTED] and [REDACTED] Exhibit A, pp. 12-29.

2. Respondent signed the application, thereby certifying the truth of the information contained therein and that she read, understood, and agreed to abide by the rules and regulations applicable to the program, including the requirement that she report any changes to household circumstances within ten days of the change. Exhibit A, pp. 28-29.
3. On August 25, 2015, the Department issued to Respondent a Notice of Case Action approving Respondent's application and informing Respondent that her FAP benefits were being issued on the basis of Respondent being in a three-person group including Respondent and her two children, [REDACTED] and [REDACTED]. Respondent was once again informed that she had an obligation to report changes to her household makeup within ten days of someone leaving the house. Exhibit A, pp. 30-35.
4. On May 3, 2016, Respondent's son, [REDACTED], began active duty service with the United States Army, based out of [REDACTED] Washington. [REDACTED] thereafter remained on active duty for all times relevant to this matter. Exhibit A, pp. 62-64.
5. On June 13, 2016, the Department issued to Respondent a Redetermination form to gather relevant information regarding Respondent's ongoing eligibility for FAP benefits. Respondent filled out and returned the Redetermination form to the Department on [REDACTED], 2016. On the form, Respondent dishonestly stated that [REDACTED] still lived in her household. Respondent signed the completed Redetermination, thereby certifying that everything in the document was true to the best of her knowledge. Exhibit A, pp. 36-41.
6. On June 5, 2017, the Department issued to Respondent a Redetermination form to gather relevant information regarding Respondent's ongoing eligibility for FAP benefits. Respondent filled out and returned the Redetermination form to the Department on [REDACTED] 2017. On the form, Respondent dishonestly stated that Donell still lived in her household. Respondent signed the completed Redetermination, thereby certifying that everything in the document was true to the best of her knowledge. Exhibit A, pp. 48-55.
7. On April 5, 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 July 1, 2016, through February 28, 2018. During that time, the Department issued to Respondent \$7,544 in FAP benefits based on Respondent's assertion that [REDACTED] was a member of the household. The Department asserts that Donell was not in the home during that time and that Respondent should have only received \$5,212 in FAP benefits. The Department seeks to establish an overissuance of FAP benefits of \$2,332. Exhibit A, pp. 1-9; 68-111.
8. 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 her son [REDACTED] moved out of the home then affirmatively misrepresented his status in the home, causing the Department to overissue Respondent FAP benefits for the period from July 1, 2016 through February 28, 2018.

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. Donell moved out of the household sometime in May 2016, at the latest. However, the Department continued to provide Respondent FAP benefits on the basis of Respondent's household including [REDACTED] through at least February 28, 2018. Because [REDACTED] was not a part of the household, Respondent should not have been issued FAP benefits on the basis of [REDACTED] inclusion in her FAP group. Thus, Respondent was overissued FAP benefits each of those months from July 1, 2016 through February 28, 2018. The overissuance value was shown to be \$2,332. Thus, the Department may recoup and/or collect on the overissuance of FAP benefits of \$2,332, less any amounts already recouped and/or collected.

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 her 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 her son, [REDACTED], was not in the home after he moved to Washington for active duty then affirmatively misrepresented his status in the home on the Redetermination forms in two subsequent years.

The Department has met its burden of proof in this matter. Respondent was reminded both on her application for benefits and on the Notice of Case Action informing her of her benefits that she was required to report any changes to the household makeup within ten days of the change. Furthermore, Respondent was clearly informed that her monthly FAP benefits were being calculated based on the inclusion of [REDACTED] in her household. On the basis of Respondent's failure to report the change alone, Respondent committed an IPV.

However, not only did Respondent fail to report the change, Respondent affirmatively misrepresented [REDACTED] status as a household member on two separate Redeterminations, one in 2016 and one in 2017. Respondent signed those documents wherein she asserted that her household included [REDACTED] despite [REDACTED] living all the way across the country in Washington while on active duty. Respondent knowingly lied to the Department to get benefits to which she was not entitled, which is an IPV.

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

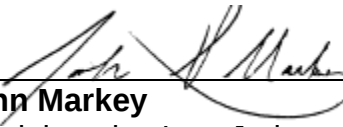
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to her FAP benefits.
2. Respondent received an overissuance of FAP benefits in the amount of \$2,332 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 Respondent shall be disqualified from receiving FAP benefits for a period of one year.

IT IS FURTHER ORDERED that the Department is authorized to initiate recoupment and/or collection procedures for the amount of \$2,332, less any amounts already recouped and/or collected.

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-49-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]