



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

Date Mailed: August 19, 2019
MOAHR Docket No.: 19-004600
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 August 5, 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).

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. Respondent was in a FAP group with her adult son, born [REDACTED] (Exhibit A, p. 12).

2. Respondent received \$2,870 in monthly FAP benefits issued by the Department from December 1, 2016 to August 31, 2017 (Exhibit A, pp. 52-53).
3. From September 24, 2016 to August 5, 2017, Respondent's son was employed by, and received income from, [REDACTED] (Employer 1) (Exhibit A, pp. 19-21).
4. Respondent did not report her son's income in the redetermination she submitted to the Department on November 22, 2016 (Exhibit A, pp. 11-18).
5. Respondent was aware of the responsibility to report changes in income.
6. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. The Department's OIG filed a hearing request on April 26, 2019, alleging that Respondent committed an IPV concerning her FAP benefits by failing to report her son's employment with Employer 1, and because his employment income was not considered in determining Respondent's household's FAP eligibility and allotment at the time of issuance, Respondent received a FAP OI totaling \$2,508.
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.

IPV

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 her son's employment income in order to receive or maintain FAP benefits from the State of Michigan. Employment income received by a FAP household member is considered in the calculation of a client's FAP eligibility and amount. 7 CFR 273.9; 7 CFR 273.10(c); BEM 556 (July 2013), pp. 2-6. FAP recipients who are not simplified reporters are required to report starting employment. 7 CFR 273.12(a)(1); BAM 105 (July 2015), pp. 10-11.

In support of its IPV case against Respondent, the Department presented (i) an redetermination Respondent submitted to the Department on November 22, 2016 in which she reported her Retirement Survivors and Disability Insurance (RSDI) income but did not report any other income to the household and certified that the answers she had provided were correct and complete (Exhibit A, pp. 15-17); (ii) income information from Employer 1 showing that Respondent's son had earnings from Employer 1 from October 1, 2016 to August 12, 2017 (Exhibit A, pp. 20-21); (iii) a spreadsheet that pulled information concerning Respondent's FAP case from Bridges, the Department's electronic database, and showed that Respondent received FAP benefits from December 1, 2016 to August 31, 2017 (Exhibit A, p. 41); and (vi) FAP OI budgets for the months between December 2016 to August 2017 that the Department alleges Respondent received a FAP OI showing the calculation of FAP benefits Respondent would have been eligible to receive if the alleged unreported income had been included in determining her FAP eligibility and allotment at the time of issuance (Exhibit A, pp. 22-40).

Information from the Work Number showed that Respondent's son had begun employment with Employer 1 the week of September 24, 2016 and was consistently employed for about 20 hours weekly at the time the redetermination was submitted. Respondent's son was employed by Employer 1 at the time Respondent submitted the redetermination to the Department on November 22, 2016, but Respondent did not report this employment to the Department. As a result, Respondent received FAP benefits she was ineligible to receive. In the absence of any contrary evidence by Respondent, the evidence presented by the Department was sufficient to establish that

Respondent intentionally withheld information concerning her son's employment for the purpose of maintaining FAP eligibility. Therefore, the Department has shown by clear and convincing evidence that Respondent committed an IPV concerning her FAP case.

Disqualification

A client who is found to have committed an IPV by a hearing decision is disqualified from receiving program benefits for one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. 7 CFR 273.16(b)(1); BAM 720, p. 16. As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV. Because this was Respondent's first FAP IPV, she is subject to a 12-month disqualification from FAP.

Overissuance

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.

In this case, the Department alleges that, although Respondent received FAP benefits totaling \$2,870 from December 1, 2016 to August 31, 2017, she was eligible for only \$362 during this period. To establish the FAP OI amount, the Department presented monthly FAP OI budgets for December 2016 to August 2017 to show the FAP benefits Respondent was eligible to receive if her son's unreported income had been included in the calculation of her FAP eligibility for each month. A review of the FAP OI budgets for these months shows that the Department properly considered Respondent's son's actual income for those months. Because Respondent did not timely report her son's employment income, she was not eligible for the 20% earned income deduction in the calculation of the household's net income. 7 CFR 273.18(c)(1); BAM 720, p. 10. A review of Respondent's recalculated income in the FAP OI budgets shows that, when Respondent's son's income from employment at Employer 1 is taken into consideration in determining Respondent's household's FAP eligibility, Respondent was eligible for \$362 in FAP benefits. Thus, she was overissued \$2,508 in FAP benefits, the difference between the \$2,870 she was issued and the \$362 she was eligible to receive, and the Department is entitled to repayment of \$2,508.

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.
2. Respondent did receive an OI of FAP benefits in the amount of \$2,508.

It is **ORDERED** the Department initiate recoupment and/or collection procedures for the amount of \$2,508 in accordance with Department policy, less any amounts the Department has already collected and/or recouped.

The Department's request that Respondent be disqualified from FAP for a period of 12 months is **APPROVED**.



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

Petitioner

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

DHHS

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

Respondent

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

cc: IPV-Recoupment Mailbox

■ [REDACTED]