



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: October 30, 2019
MOAHR Docket No.: 19-007350
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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 October 24, 2019 from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG). Respondent failed to appear. The hearing was held in his absence pursuant to 7 CFR 273.16(e). During the hearing, an 85-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-85.

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 ██████████ 2017, Respondent submitted to the Department an application for FAP benefits. Exhibit A, pp. 11-53.

2. Respondent reported on the application that his household had monthly income of \$1,000. Later in the application, Respondent indicated that nobody in his household had income from a job. Exhibit A, pp. 13; 27-28.
3. Respondent signed the application, thereby certifying that all information contained in the application was true to the best of his knowledge. Respondent's signature further certified that he received, read, and understood the information contained in a pamphlet titled "Things You Must Do." The Things You Must Do pamphlet informed Respondent that he 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 him. Exhibit A, pp. 34-36.
4. Respondent was approved for benefits and began receiving monthly FAP benefits from the Department. From December 2017 through February 2018, Respondent received \$640 per month. From March 2018 through July 2018, Respondent received \$504 per month. Exhibit A, p. 57.
5. On September 25, 2017, Respondent began working for [REDACTED]. On October 15, 2017, Respondent received his first paycheck from his employment. Between that date and at least the sometime in September 2018, Respondent was continuously employed and earning wages at [REDACTED] although his earnings varied from week to week. Typically, they averaged about \$1,600 per two-week pay period. Exhibit A, pp. 54-56.
6. Respondent never reported his income or employment with RJ to the Department.
7. Because the Department was unaware of the new income, the Department continued to issue to Respondent the monthly FAP benefits without respect to that additional income. From December 1, 2017 through July 31, 2018, the Department issued to Respondent \$4,440 in FAP benefits. Upon factoring Respondent's actual income into the budgets, the Department found that Respondent was not entitled to any FAP benefits during that time period. Prior to the hearing, the Department had already established that Respondent received an overissuance of FAP benefits totaling \$4,440. Exhibit A, pp. 1-9; 58-74; 85.
8. On June 20, 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 December 1, 2017 through July 31, 2018. Exhibit A, pp. 1-9; 58-74.
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 his understanding or ability to fulfill his reporting requirements. Exhibit A, p. 84.

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 \$4,440 in FAP benefits for the period from December 1, 2017 through July 31, 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 (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 he was entitled to receive. The Department determined Respondent's eligibility without budgeting Respondent's concealed income from his employment with ■■■, which caused Respondent's household income to be understated. Properly factoring into the equation the household's unreported income rendered Respondent ineligible for any amount of FAP benefits. Prior to the hearing, the Department had already established that Respondent received an \$4,440 overissuance of FAP benefits.

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 his 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.

Starting in October 2017 and continuing through at least the end of the fraud period, Respondent received substantial income every other week. Respondent failed to report that he became employed or had any new income despite him continuously working and receiving paychecks from October 15, 2017 through at least the end of the fraud period. Instead, he continued to receive and use his Department-issued benefits that were known to be calculated on the basis of his income prior to obtaining the new job.

Respondent's failure to report the income or employment change to the Department must be considered an intentional omission to maintain his benefits since Respondent knew or should have known that he 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 his benefits. It is clear that Respondent knew of the reporting and disclosure requirements and had an intent to deceive the Department regarding his income in order to maximize his 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.

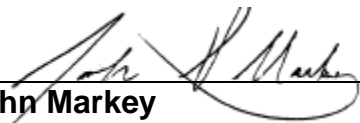
DECISION AND ORDER

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 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/tm



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

DHHS

Denise McCoggle
27260 Plymouth Rd
Redford, MI
48239

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

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

cc: IPV-Recoupment Mailbox
L. Bengel