



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

Date Mailed: November 26, 2019
MOAHR Docket No.: 19-008558
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 November 21, 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. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e). During the hearing, a 111-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-111.

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. Respondent was an ongoing recipient of FAP benefits. Exhibit A, p. 108.
2. At all times relevant to the instant matter, Respondent lived in a household that included herself, [REDACTED], and at least one child whose parents were Respondent and [REDACTED]. Exhibit A, pp. 17; 82.

3. On [REDACTED] 2014, Respondent submitted to the Department an application for State Emergency Relief (SER) benefits. On that application, Respondent indicated that the only income for the household was from [REDACTED] SSI. Exhibit A, pp. 13-40.
4. Included with the application was a set of instructions entitled "Things You Must Do." The instructions clearly informed Respondent that she was required to give complete and honest information and report certain types of changes in circumstances to the Department within ten days of the change. Regarding anyone in the household starting employment, Respondent was informed that she was required to report the change to the Department within ten days of the issuance of the first payment. Further, the instructions stated that intentionally providing false information or failing to properly report a change could result in penalties for fraud. Exhibit A, p. 40.
5. On or about September 14, 2015, [REDACTED] began working for [REDACTED]. [REDACTED] [REDACTED] regularly worked at and received wages from [REDACTED] from that date through at least some time in July 2016. Exhibit A, pp. 41-45.
6. Respondent never reported the income or employment change to the Department.
7. On [REDACTED] 2015, Respondent submitted to the Department another application for SER benefits. On that application, Respondent indicated that the only income for the household was from [REDACTED] SSI. Again, Respondent signed the application, thereby certifying the truth of the statements therein. Exhibit A, pp. 46-67.
8. On [REDACTED], 2016, Respondent submitted to the Department an application for MA benefits. Once again, Respondent asserted that nobody in the household had any employment or income therefrom and that the only household income was [REDACTED] SSI. Respondent signed the application, thereby certifying the truth of the statements therein. Exhibit A, pp. 68-80.
9. On April 11, 2016, the Department issued to Respondent a Redetermination to gather relevant information regarding Respondent's ongoing eligibility for Department-issued benefits. Respondent returned the signed and completed form on [REDACTED] 2016. Once again, Respondent asserted that the only income for the household came from [REDACTED] SSI. Exhibit A, pp. 81-86.
10. From November 1, 2015 through June 30, 2016, Respondent received \$8,178 in FAP benefits. In calculating those benefits, the Department did not take into consideration any of the income [REDACTED] was receiving from his employment with [REDACTED] due to Respondent's repeated failure to disclose that income in a change report or the three applications submitted after he obtained that job. After

factoring that income into the budget, Respondent was only entitled to receive \$3,237 in FAP benefits during that time period. Prior to the hearing in this matter, the Department had already established that Respondent received an overissuance of FAP benefits in the amount of \$4,941. Exhibit A, pp. 90-111.

11. On July 25, 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 November 1, 2015 through June 30, 2016. Exhibit A, pp. 1-10.
12. Respondent did not have any apparent mental or physical impairment that would limit her understanding or ability to fulfill her reporting requirements.

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 household income then subsequently misrepresenting her household's income on at least three applications. The Department seeks an order disqualifying Respondent from receiving FAP benefits for a period of one year for a first IPV.

Overissuance

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (May 2014), 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 she was entitled to receive. The Department determined Respondent's eligibility without budgeting [REDACTED] wages from his employment with [REDACTED], which caused the household's income to be understated. When factored into the calculation, the unreported income reduced the amount of FAP benefits that Respondent was eligible to receive. Prior to the hearing in

this matter, the Department had already established that Respondent was overissued \$4,941 of FAP benefits from November 1, 2015 through June 30, 2016.

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 (October 2014), 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 her group'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 at the time of the application. Respondent failed to report that household member [REDACTED] became employed or had any new income despite continuously working and receiving paychecks while collecting FAP benefits based on the household's reported earned income of \$0.

Additionally, Respondent was required to completely and truthfully answer all questions on forms and in interviews. BAM 105, p. 8. The Department clearly and correctly instructed Respondent to provide true and complete information on her applications and subsequent Redetermination. There is no evidence in the record to suggest that Respondent suffered from a physical or mental impairment that would limit her understanding or ability to fulfill her reporting responsibilities. Despite being so warned, Respondent dishonestly stated on three applications and one Redetermination that her had no earned income during a time period that [REDACTED] was regularly working and receiving substantial income.

Respondent's failure to report the income or employment change to the Department must be considered an intentional omission to maintain her FAP benefits since Respondent knew or should have known that she 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 her FAP benefits. Additionally, Respondent's affirmative misrepresentations on the three applications and one Redetermination during the fraud period must also be considered intentional misrepresentations to maintain FAP benefits. Respondent was repeatedly informed that she was required to report any changes to her household's income and given clear instructions on how to do so. While receiving FAP benefits, Respondent's household had income from [REDACTED] for an extended period of time without ever informing the Department of the income. Then, while [REDACTED] was still employed with [REDACTED] Respondent submitted dishonest applications and a Redetermination to the Department. It is clear that Respondent knew of the reporting and disclosure requirements and had an intent to deceive the Department regarding her household's income in order to maximize her FAP 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.

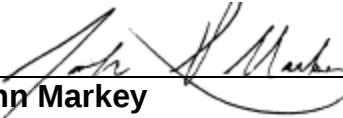
DECISION AND ORDER

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 her 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

Kimberly Kornoelje
121 Franklin SE
Grand Rapids, MI
49507

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

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

cc: IPV-Recoupment Mailbox
L. Bengel