



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: December 16, 2019
MOAHR Docket No.: 19-008802
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 December 12, 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), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5). During the hearing, a 70-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-70.

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 and MA benefits from the Department.

2. On October 10, 2016, the Department issued to Respondent a Redetermination form to gather relevant information regarding Respondent's ongoing eligibility for program benefits. Respondent completed the form and returned it to the Department on October 28, 2016. Exhibit A, pp. 12-19.
3. On August 17, 2017, Respondent began working for [REDACTED]. She received her first paycheck on August 25, 2017. Respondent maintained regular employment and earnings from that job through at least March 28, 2018. Exhibit A, pp. 47-53.
4. On October 4, 2017, the Department issued to Respondent a Redetermination form to gather relevant information regarding Respondent's ongoing eligibility for program benefits. Respondent completed the form and returned it to the Department on October 25, 2017. Despite the fact that she was working and earning substantial earnings at the time, Respondent fraudulently represented to the Department that she had no job. Respondent signed the Redetermination, thereby certifying the truth of the dishonest information and acknowledging that she could face severe penalties for intentionally misrepresenting facts to get benefits. Exhibit A, pp. 20-27.
5. On [REDACTED] 2017, Respondent submitted to the Department an application for State Emergency Relief benefits. On that application, Respondent once again fraudulently represented her income situation by claiming to not have a job. Respondent signed the application, thereby certifying the truth of the dishonest information and acknowledging that she could face severe penalties for intentionally misrepresenting facts to get benefits. Exhibit A, pp. 28-31.
6. From October 1, 2017 through March 31, 2018, the Department issued to Respondent \$3,060 in FAP benefits based on Respondent's fraudulent misrepresentations regarding her household income. Respondent was entitled to receive \$1,957 of FAP benefits during that period once her fraudulently concealed income is factored into the equation. The Department has already established that Respondent received an overissuance of FAP benefits totaling \$1,103. Exhibit A, p. 70.
7. On July 31, 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 October 1, 2017 through March 31, 2018. Exhibit A, pp. 1-9.
8. 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.

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.

In this case, Respondent received more benefits than she was entitled to receive. The Department determined Respondent's eligibility without budgeting Respondent's hidden income, which caused Respondent'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 \$1,103 of FAP benefits during the fraud period.

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, p. 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 completely and truthfully answer all questions on forms and in interviews. BAM 105 (October 2016), p. 9; 7 CFR 273.12; 7 CFR 273.21. The Department clearly and correctly instructed Respondent to provide true and complete information on the applications and other documents. 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 repeatedly informed of her responsibilities, Respondent continuously misrepresented her income to the Department by intentionally failing to inform the Department of her income from her employment, which was substantial and regular. Respondent's affirmative misrepresentations on the application and Redetermination and failure to subsequently report the income must be considered intentional misrepresentations to maintain her FAP benefits. Respondent was repeatedly informed that she was required to report all income to the Department. Respondent instead submitted dishonest statements to the Department on the documents. It is clear that Respondent knew of the reporting and disclosure requirements and had an intent to deceive the Department regarding her 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.

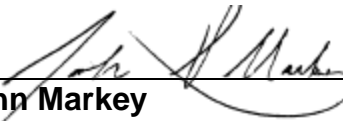
DECISION AND ORDER

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

Kael Meyer
5653 South M-37
Baldwin, MI
49304

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

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

cc: IPV-Recoupment Mailbox
L. Bengel