



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: November 26, 2019
MOAHR Docket No.: 19-008968
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 96-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-96.

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] 2017, Respondent submitted to the Department an application for FAP benefits for a household that included herself and her minor child.

Respondent indicated that she was homeless and used a mailing address in [REDACTED] Michigan. Exhibit A, pp. 10-47.

2. 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 changes in residence or household composition, Respondent was informed that she was required to report the change to the Department within ten days of the change. Further, the instructions stated that intentionally providing false information or failing to properly report a change could result in penalties for fraud. Exhibit A, pp. 28-29.
3. Respondent signed the application, thereby certifying that all of the information was truthful and acknowledging that she received, reviewed, and agreed with the instructions contained in the "Things You Must Do" document. Exhibit A, pp. 27-28.
4. In March 2018, Respondent moved in with [REDACTED] to a home in [REDACTED], Michigan. At the time, Respondent was pregnant with twins. [REDACTED] was the father. Exhibit A, pp. 57-58.
5. At the time Respondent moved in with [REDACTED] and at all times relevant to the instant matter, [REDACTED] was employed and earning regular income from his job with [REDACTED]. Exhibit A, pp. 59-90.
6. On April 15, 2018, Respondent gave birth to her and [REDACTED] twin children. Exhibit A, pp. 52-53.
7. On June 13, 2018, Respondent submitted to the Department a Change Report to inform the Department about the addition of the twins to her household. On the Change Report, Respondent informed the Department that there had been no address change despite having moved into the house in [REDACTED] just couple of months before. When asked list all household members, Respondent included herself, the child that was already a part of the household, and the newborn twins. Respondent neglected to include [REDACTED] on the form even though she lived with him at the time. Additionally, when asked, Respondent indicated that nobody in the household had income. Exhibit A, pp. 48-55.
8. Respondent signed the Change Report, thereby certifying under penalty of perjury that the information she provided was truthful. Exhibit, p. 55.
9. Respondent was approved for and received FAP benefits based on the information Respondent provided. From May 1, 2018 through June 30, 2018, Respondent received FAP benefits for her household that purportedly included only herself, her

minor child, and her newborn twins. [REDACTED] income was never factored into the equation because Respondent lied about her household's composition by neglecting to mention him on the Change Report. Exhibit A, pp. 1-8, 91-96.

10. At some point, the matter was assigned to [REDACTED] to investigate whether Respondent was engaging in fraudulent activity with respect to her FAP benefits. On June 25, 2018, [REDACTED] traveled to [REDACTED] house in [REDACTED] Michigan to determine whether Respondent was living there. Respondent was there, and during their conversation, Respondent admitted to moving to the [REDACTED] house to live with [REDACTED] in March 2018. Exhibit A, pp. 56-57.
11. On August 8, 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 May 1, 2018 through June 30, 2018. The Department is seeking to establish a \$605 overissuance of FAP benefits received during the fraud period. Exhibit A, pp. 1-8, 91-96.
12. 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.
13. 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 misrepresenting her household makeup, which resulted in a misrepresentation of household employment and income. The Department contends that the misrepresentation led the Department to overissue to Respondent \$605 in FAP benefits for the period from May 1, 2018 through June 30, 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 she was entitled to receive. Parents and their children under age 22 who live together must be in the same group. BEM 212 (October 2015), p. 1. As of April 15, 2018, Respondent and [REDACTED] had children together, with whom they both lived at the home in [REDACTED] Michigan. From then forward, they, along with Respondent's other child, lived together in the same household.

However, because Respondent lied about her household makeup and the fact that she moved, the Department did not include [REDACTED] or his income in the FAP group. The Department determined Respondent's eligibility without budgeting [REDACTED] concealed income from his employment, which caused Respondent's household income to be understated. Properly factoring into the equation the household's unreported income reduced the amount of FAP benefits that Respondent was eligible to receive. The Department established that Respondent received \$992 in FAP benefits but was entitled to receive only \$387 in FAP benefits during the alleged fraud period. Thus, the Department has shown that it overissued \$605 of FAP benefits from May 1, 2018 through June 30, 2018.

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 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 she moved in with [REDACTED] who had substantial income.

Further, Respondent was required to completely and truthfully answer all questions in forms and in interviews. BAM 105, p. 9. On [REDACTED], 2018, Respondent submitted Change Report to the Department. On the Change Report, Respondent lied about her household makeup and income by certifying that she, her minor child, and her newborn twins were the only people in the household. Respondent further dishonestly stated that she had not had an address change and that nobody in her household had any income. Respondent knew that she had moved in with [REDACTED] and in all likelihood knew that he was working and bringing in income to the household. Thus, Respondent affirmatively misrepresented her household's makeup and income when filing a sworn document with the Department.

Respondent's dishonest and misleading statements to the Department regarding her household must be considered an intentional misrepresentation to maintain her FAP benefits since Respondent knew or should have known that she was required to report [REDACTED] income and inclusion in the household to the Department and that reporting the income to the Department would have caused the Department to recalculate and reduce her FAP benefits. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her reporting requirement. 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:

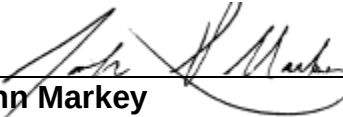
1. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to her FAP benefits.

2. The Department has established by clear and convincing evidence that Respondent received an overissuance of FAP benefits in the amount of \$605 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 the Department shall initiate recoupment/collection procedures for the amount of \$605 in accordance with Department policy, less any amounts already recouped or collected.

IT IS FURTHER ORDERED that Respondent shall be disqualified from receiving FAP benefits for a period of one year.

JM/tm

A handwritten signature in black ink, appearing to read "John Markey", is written over a horizontal line.

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