



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: October 24, 2019
MOAHR Docket No.: 19-009042
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 October 17, 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. It 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 146-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-146.

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 from the Department.
2. On [REDACTED], 2014, Respondent submitted to the Department a completed Mid-Certification Contact Notice. Respondent signed the document, thereby certifying

that he would report changes in household circumstances as required. Exhibit A, pp. 27-29.

3. On July 28, 2014, the Department issued to Respondent a Notice of Case Action informing Respondent that his FAP group of six, including Shelly Watson, was approved for continuing benefits. Based on Respondent's statements regarding the household circumstances, the Department was only budgeting \$999 in monthly income, all unearned. Again, Respondent was informed of his obligation to report changes to household circumstances, including income, to the Department within ten days of the change. Exhibit A, pp. 30-39.
4. In May 2015, [REDACTED] began working for [REDACTED]). On May 22, 2015, [REDACTED] received her first paycheck from [REDACTED]. [REDACTED] regularly worked and received wages from FF for all relevant times thereafter. Exhibit A, pp. 56-105.
5. Respondent never reported the additional income to the Department, and he continued receiving FAP benefits based on the household income before [REDACTED]. [REDACTED] began working. Exhibit A, pp. 108-128.
6. On [REDACTED], 2015, the Department received from Respondent a completed Redetermination form. On the form, Respondent fraudulently misrepresented his household's income by not including any mention of [REDACTED] job with [REDACTED]. Respondent signed the completed form, thereby certifying that everything was true to the best of his knowledge. Exhibit A, pp. 40-45.
7. On August 13, 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 July 1, 2015 through March 31, 2016. The Department has already established a \$1,952 client error overissuance of FAP benefits received during the fraud period. 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 Service as undeliverable.
9. Respondent did not have any apparent mental or physical impairment that would limit his understanding or ability to fulfill his 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 concealing and misrepresenting his household's income from the Department, causing the Department to overissue FAP benefits based on an artificially deflated income level.

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 [REDACTED] income from her employment with [REDACTED], 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. Prior to the hearing in this matter, the Department had already established that Respondent received an overissuance of FAP benefits in the amount of \$1,952.

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)).

On multiple forms, Respondent acknowledged that he understood his duty to report all changes to household income to the Department. The Department repeatedly informed Respondent that his FAP benefits were approved and that they were based on income figures that did not include [REDACTED] income. Respondent stayed silent while knowingly collecting FAP benefits that were based on erroneous and incomplete information. Further bolstering that conclusion is that Respondent was required to completely and truthfully answer all questions in forms and in interviews yet lied about household income on the 2015 Redetermination. BAM 105, p. 9.

Respondent's fraudulent concealment of his household's income must be considered an intentional effort to maintain his FAP benefits since Respondent knew or should have known that he was required to report the income to the Department and that reporting the income to the Department would have caused the Department to recalculate and reduce his FAP benefits. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his 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. A disqualified recipient remains a member of an active group as long as he or she lives with them, and other eligible group members may continue to receive benefits. 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.

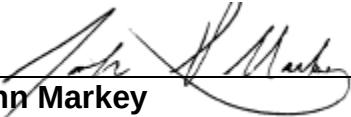
DECISION AND ORDER

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

Jennifer Dunfee
692 E. Main
Centreville, MI
49032

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

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

cc: IPV-Recoupment Mailbox
L. Bengel