



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 25, 2019
MOAHR Docket No.: 19-009480
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 failed to appear. The hearing was held in his absence pursuant to 7 CFR 273.16(e). During the hearing, a 49-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-49.

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. Respondent was an ongoing recipient of FAP benefits from the Department.
2. Respondent had disclosed to the Department that he owned his home located on [REDACTED] in [REDACTED], Michigan.

3. On December 5, 2016, the Department issued to Respondent a Redetermination form to gather relevant information regarding Respondent's ongoing eligibility for FAP benefits. On [REDACTED] 2016, Respondent returned the completed form to the Department. Exhibit A, pp. 10-17.
4. On January 27, 2017, the Department issued to Respondent a Notice of Case Action informing Respondent that he was approved for FAP benefits. The document further notified Respondent that he had an obligation to report changes to the Department within 10 days of the change. Exhibit A, pp. 19-24.
5. On December 27, 2017, Respondent became the owner of real property located at [REDACTED], [REDACTED], Indiana. According to property records, the property was valued at \$18,200. Exhibit A, pp. 37-42.
6. On [REDACTED], 2018, Respondent returned a completed Redetermination form to the Department. On the section of the document where Respondent was asked to disclose all assets, including real property, Respondent fraudulently indicated that he had none, despite having real property transferred into his ownership the month before, not to mention the property he still owned in [REDACTED], Michigan. Respondent signed the form, thereby certifying that all the information contained therein was true and accurate. Exhibit A, pp. 25-30.
7. Respondent was approved for and received FAP benefits based on the information Respondent provided to the Department. From February 1, 2018 through September 30, 2018, Respondent received \$2,016 in FAP benefits. Exhibit A, pp. 1-8; 45.
8. On September 3, 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 with respect to FAP to be February 1, 2018 through September 30, 2018. During the fraud period, the Department issued to Respondent \$2,016 in FAP benefits. The Department believes that Respondent was not entitled to any FAP benefits during that timeframe. The Department is seeking to establish a \$2,016 overissuance of FAP benefits received during the fraud period. Exhibit A, pp. 1-8; 45.
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.

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 his assets, leading the Department to erroneously overissue FAP benefits despite Respondent's alleged ineligibility due to excess assets. The Department contends that the material misrepresentations led the Department to overissue to Respondent \$2,016 in FAP benefits for the period from February 1, 2018 through September 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 (July 2013), 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.

To be eligible for FAP benefits, the value of the individual's assets must not exceed the applicable asset limit. BEM 400 (July 2013), pp. 5-6. For FAP, the limit on countable assets is \$5,000. BEM 400, p. 5. An asset is countable if it meets the availability tests and is not excluded. BEM 400, p. 2. In general, an asset is considered available to an individual if that individual has the legal right to use or dispose of the asset. BEM 400, p. 2. The Department excludes from countable assets the value of a client's homestead. BEM 400, pp. 30-33.

In this case, Respondent owned his primary residence, which was properly excluded by the Department, and the Indiana property during the entire fraud period and for at least a month prior. The Indiana property was valued at \$18,200. Accordingly, the value of Respondent's interest in the Indiana property was at all relevant times greater than the limit applicable FAP. Because the value of Respondent's countable assets exceeded the limit for program eligibility, all of the benefits Respondent received were overissued.

The Department established that Respondent was not entitled to any FAP benefits from February 1, 2018 through September 30, 2018. The Department issued to Respondent

a total of \$2,016 in FAP benefits during that period. Thus, the Department has shown that it overissued \$2,016 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 (July 2013), 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 completely and truthfully answer all questions in forms and in interviews. BAM 105 (July 2013), p. 6. On the Redetermination Respondent submitted [REDACTED], 2018, Respondent affirmatively misrepresented his asset situation to the Department by failing to disclose any ownership interest he had in real property. Respondent's misrepresentation is particularly egregious given that the Redetermination was submitted to the Department just days after he obtained ownership of the Indiana property. Respondent then signed the document, thereby fraudulently certifying that the information was true and complete.

Respondent's dishonest and misleading statements to the Department regarding his assets must be considered an intentional misrepresentation to maintain his FAP benefits since Respondent knew or should have known that he was required to report the information to the Department and that reporting the information to the Department could have caused the Department to find him ineligible for 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

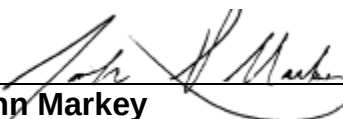
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to his FAP benefits.
2. The Department has established by clear and convincing evidence that Respondent received an overissuance of FAP benefits in the amount of \$2,016 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 FAP overissuance amount of \$2,016 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



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