



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: January 20, 2020
MOAHR Docket No.: 19-011044
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 January 23, 2020 from Detroit, Michigan. The Department was represented by Ryan Sevenski, 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 61-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-61.

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) and Medicaid (MA)?
2. Did Respondent receive an overissuance of MA benefits that the Department is entitled to recoup and/or collect?
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. On September 12, 2016, the Department issued to Respondent a Redetermination to gather relevant information regarding Respondent's ongoing eligibility for benefits. Respondent completed the Redetermination and returned it to the Department on October 4, 2016. Exhibit A, pp. 12-17.
3. Respondent signed the Redetermination, certifying the truth of the information in the Redetermination and that he received, read, and understood his rights and responsibilities under the programs. Included in the information Respondent acknowledged receiving was a publication titled Things You Must Do. The Things You Must Do publication informed Respondent that he must be truthful in all his statements to the Department and must report changes to the Department, including change in income and employment, within ten days of the change. Exhibit A, p. 32.
4. On October 5, 2016, the Department issued to Respondent a Notice of Case Action informing Respondent that he was approved for ongoing FAP benefits. Furthermore, the document informed Respondent that his benefits were calculated on the basis of Respondent having no income. Once again, Respondent was reminded of the responsibility to report changes to the Department within ten days of the change. Exhibit A, pp. 19-22.
5. On June 18, 2017, Respondent began working for [REDACTED]. He received his first paycheck on June 23, 2017. Respondent maintained regular employment and earnings from that job through at least January 19, 2018. Exhibit A, pp. 45-47.
6. Just one day after Respondent began working for [REDACTED] Respondent submitted to the Department a [REDACTED] 2017 application for FAP and MA benefits. On the application, Respondent stated that he had no job or income. Respondent signed the application, certifying the truth of the information in the application and that he received, read, and understood his rights and responsibilities under the programs. Included in the information Respondent acknowledged receiving was a publication titled Things You Must Do. The Things You Must Do publication informed Respondent that he must be truthful in all his statements to the Department and must report changes to the Department, including change in income and employment, within ten days of the change. Exhibit A, pp. 25-32.
7. On June 20, 2017, the Department issued to Respondent a Health Care Coverage Determination Notice informing him that his application for MA benefits was approved. The document included instructions reminding Respondent that he had an obligation to report any changes, including income changes, within ten days of the date of the change. Exhibit A, pp. 33-35.

8. On September 5, 2017, the Department issued to Respondent a Redetermination to gather relevant information regarding Respondent's ongoing eligibility for benefits. Respondent completed the Redetermination and returned it to the Department on October 4, 2017. Respondent indicated on the form that he had no income or employment and that his last paycheck from any employment was received on March 31, 2017 despite having earned and received regular wages over the few months leading up to the October 2017 submission. Additionally, Respondent indicated that his total income for 2017 was \$██████ despite the fact that he had received over \$██████ in just the period from June through September 2017. Exhibit A, pp. 36-47.
9. Respondent signed the Redetermination, certifying the truth of the information in the Redetermination and that he received, read, and understood his rights and responsibilities under the programs. Included in the information Respondent acknowledged receiving was a publication titled Things You Must Do. The Things You Must Do publication informed Respondent that he must be truthful in all his statements to the Department and must report changes to the Department, including change in income and employment, within ten days of the change. Exhibit A, p. 36-43.
10. Respondent never reported his earnings to the Department and continued to receive and utilize the public benefits that were issued to him on the premise of him having no income.
11. From August 1, 2017 through October 31, 2017, the Department issued to Respondent ████████ in FAP benefits because of Respondent's fraudulent concealment of his household income. Respondent was entitled to receive only \$██████ of FAP benefits during that period once his fraudulently concealed income is factored into the equation. The Department has already established that Respondent received an overissuance of FAP benefits totaling ████████. Exhibit A, pp. 1-9.
12. From August 1, 2017 through October 31, 2017, the Department dispensed \$██████ in MA benefits for Respondent's benefit. If Respondent had properly reported his income to the Department, Respondent would not have been eligible for any MA benefits during that time. Exhibit A, pp. 1-9; 56-59.
13. On ████████ 2019, the Department's OIG filed a hearing request to establish an IPV with respect to FAP and MA. The Department's OIG requested that Respondent be disqualified from receiving FAP benefits for two years for a second alleged IPV. Additionally, the Department seeks an order finding that Respondent received an overissuance of MA benefits totaling \$██████. The Department considers the alleged fraud period to be August 1, 2017 through October 31, 2017. Exhibit A, pp. 1-9.

14. 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 he 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 and MA benefits that Respondent was eligible to receive. Prior to the hearing in this matter, the Department had already established that Respondent was overissued ██████ of FAP benefits during the fraud period. During the hearing, the Department proved by clear and convincing evidence that Respondent was overissued ██████████ in MA 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 report changes in his circumstances to the Department within 10 days of the date of the change. BAM 105 (April 2016), pp. 11-12. Additionally, Respondent was required to completely and truthfully answer all questions in forms and interviews. BAM 105, p. 9. The Department clearly and correctly instructed Respondent of his responsibilities. Respondent failed to report that he obtained new employment with Tradesmen International at any time during the time he was working there and receiving MA and FAP benefits from the Department. Additionally, Respondent fraudulently misrepresented his employment status on both the [REDACTED] 2017 application and the October 2017 Redetermination. Respondent's failure to report this change to the Department and subsequent lies regarding income and employment must be considered an intentional misrepresentation to maintain his MA and FAP benefits since Respondent knew or should have known that he was required to report the change and be honest to the Department and that reporting the change to the Department would have caused the Department to reduce or terminate his benefits. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his reporting requirement.

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, Respondent was previously found to have committed an IPV related to FAP benefits. Thus, this is Respondent's second IPV related to FAP benefits. Therefore, Respondent is subject to a two-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 and MA benefits.

2. The Department has established by clear and convincing evidence that Respondent received an MA overissuance of \$ [REDACTED] that the Department is entitled to recoup and/or collect.
3. Respondent is subject to a two-year disqualification from receiving FAP benefits.

IT IS ORDERED that Respondent shall be disqualified from receiving FAP benefits for a period of two years.

IT IS FURTHER ORDERED that the Department may initiate recoupment and/or collection of the \$ [REDACTED] MA overissuance established in this matter.

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

Melissa Brandt
920 East Lincoln St
Ionia, MI
48846

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

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

cc: IPV-Recoupment Mailbox
L. Bengel