



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: March 12, 2020
MOAHR Docket No.: 19-013500
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 February 12, 2020, 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 and 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).

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of 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 a recipient of FAP benefits issued by the Department. From November 1, 2017 to February 28, 2018, (FAP fraud period), Respondent was issued \$2,016 in FAP benefits by the State of Michigan and the Department alleges that Respondent was entitled to \$667 in such benefits during this time period, resulting in a FAP OI of \$1,349.

2. On or around [REDACTED] 2017, Respondent signed and submitted an assistance application to receive FAP benefits. In signing the application, Respondent acknowledged being aware of the responsibility to accurately report her circumstances and to report changes in her circumstances to the Department, including changes in employment and income. (Exhibit A, pp. 8-49)
 - a. At the time of the [REDACTED] 2017 application, Respondent did not have any earned income.
3. The Department sent Respondent a Notices of Case Action dated June 6, 2017, notifying her that she was approved FAP benefits based on \$0 in reported earned income. The Notices of Case Action again advised Respondent of her reporting responsibilities. (Exhibit A, pp. 50-56)
4. The Department had no reason to believe that Respondent had a physical or mental impairment that would limit her understanding or ability to fulfill her reporting requirements.
5. The Department obtained verification of Respondent's employment and earnings showing that her employment began on or around September 6, 2017, that her first pay date was September 22, 2017, and that she continued to be employed and earning income through the fraud period. (Exhibit A, pp. 57)
6. On or around [REDACTED], 2018, Respondent submitted an application to receive Child Development and Care (CDC) benefits on which, she accurately reported that she gained employment in September 2017 and had been receiving earned income since that time. (Exhibit A, pp. 58-92)
7. The Department's OIG filed a hearing request on or around December 11, 2019 alleging that Respondent intentionally failed to report her earned income, and as a result received FAP benefits that she was ineligible to receive, causing a FAP OI of \$1,349.
8. This was Respondent's first alleged IPV and the Department requested that Respondent be disqualified from receiving FAP benefits for 12 months.
9. The Department has established a client error FAP OI claim in the amount of \$1,349 and is not seeking a decision on recoupment of the FAP OI.
10. A Notice of Hearing was mailed to Respondent at her last known address and was not returned by the US Post Office 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.

As a preliminary matter, although the Department presented evidence in support of a FAP OI in the amount of \$1,349, the Department testified that a client error caused OI had previously been established in this matter. Thus, because a client error OI has already been established in this matter, a decision will not be issued on the OI of \$1,349 for the FAP fraud period. The Department proceeded with its hearing request regarding the alleged IPV and FAP disqualification.

Intentional Program Violation

Effective October 1, 2014, the Department's OIG requests IPV hearings for cases involving alleged fraud of FAP benefits in excess of \$500. BAM 720 (October 2017), p. 5, 12-13. An IPV occurs when a recipient of Department benefits intentionally (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation FAP, FAP federal regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FAP benefits or electronic benefit transfer (EBT) cards. 7 CFR 273.16(c). For an IPV based on inaccurate reporting, Department policy requires that an OI, and all three of the following exist: the client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and the individual was also clearly and correctly instructed regarding his or her reporting responsibilities and the individual have no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 720, p. 1.

To establish an IPV, the Department must present clear and convincing evidence that the household member committed, and intended, to commit the IPV or intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. 7 CFR 273.16(e)(6); BAM 720, p. 1. Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01; *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533, 541 (2010)

In this case, the Department alleges that Respondent committed an IPV because she failed to timely report to the Department that she was employed and earning income,

causing an overissuance. Clients must completely and truthfully answer all questions on forms and in interviews. Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes such as starting or stopping employment, earning income, and starting or stopping a source of unearned income must be reported within ten days of receiving the first payment reflecting the change. BAM 105 (October 2016), pp. 9-12; 7 CFR 273.12(a)(1); 7 CFR 273.21.

The Department contended that Respondent's failure to timely report the employment and earned income caused an OI of FAP benefits in the amount of \$1,349 from November 1, 2017 to February 28, 2018. The Department presented evidence from Respondent's employer, showing that Respondent's employment began on or around September 6, 2017, that her first pay date was September 22, 2017, and that she continued to be employed and earning income through the fraud period.

In support of its contention that Respondent committed an IPV, the Department presented a May 2017 assistance application completed by Respondent and submitted to the Department prior to the alleged fraud period and before her employment start date. In signing and completing the application and redetermination, Respondent acknowledged being aware of the responsibility to accurately report her circumstances and to report changes in her circumstances to the Department, including changes in employment and income. The Department also presented Respondent's [REDACTED] 2018, assistance application on which she accurately reported that she has been employed and earning income since September 2017.

After a thorough review of the evidence presented, although the Department established that Respondent was advised of her responsibility to report changes in circumstances, the Department has failed to establish that she intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. The evidence showed that although late, Respondent reported her employment to the Department when she completed the [REDACTED] 2018 application. No additional documentation was presented showing that Respondent's failure to timely disclose her earnings was intentional. As such, the Department has failed to establish, by clear and convincing evidence, that Respondent had the intent to commit an IPV.

Disqualification

A client who is found to have committed an IPV by a hearing decision is disqualified from receiving program benefits for one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. 7 CFR 273.16(b)(1); 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. 7 CFR 273.16(b)(11); BAM 720, p. 16. As discussed above, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of the FAP. Therefore, Respondent is **not** subject to a disqualification from the FAP.

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 not** established by clear and convincing evidence that Respondent committed an IPV and thus, Respondent is not subject to disqualification from the FAP.



ZB/tm

Zainab A. Baydoun
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

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

DHHS

Sharnita Grant
25637 Ecorse Rd.
Taylor, MI
48180

Respondent

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

cc: IPV-Recoupment Mailbox
L. Bengel