



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 15, 2018
MAHS Docket No.: 18-003271
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 and 42 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16 and 42 CFR 431.230(b). After due notice, a telephone hearing was held on August 14, 2018, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e). During the hearing, 46 pages of documents were offered and admitted as Department's Exhibit A, pages 1-46.

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)?
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 August 19, 2009, the Department issued a Redetermination, Form 1010, to Respondent to obtain relevant ongoing eligibility information from Respondent. Exhibit A, pages 11-14.

2. On [REDACTED] 2009, Respondent returned the completed Redetermination to the Department and certified that all information contained within the document was accurate. Exhibit A, pages 11-14.
3. On the returned Redetermination, Respondent indicated that she had three people living in her home and the only source of income was from Respondent's part-time job at [REDACTED] Exhibit A, page 12.
4. On September 26, 2009, the Department sent Respondent a Notice of Case Action informing Respondent that she was eligible for \$257.00 per month in FAP benefits. Exhibit A, pages 15-19.
5. The Notice of Case Action informed Respondent that she was a simplified reporting client and that "the only change you are required to report for the Food Assistance program is: WHEN YOUR HOUSEHOLD INCOME EXCEEDS THE LIMIT LISTED BELOW," which was \$1,984.00. Exhibit A, pages 16-17.
6. On or about December 5, 2009, the Social Security Administration informed Respondent that each of her children would be receiving a lump sum in excess of \$4,000 in December 2009 and \$1,327.00 per month starting January 2010 in RSDI income. Exhibit A, pages 22-27.
7. Respondent did not initially report the change to the Department.
8. On February 1, 2010, the Department issued a Semi-Annual Contact Report, Form 1046, to Respondent to obtain relevant ongoing eligibility information from Respondent. Exhibit A, pages 28-29.
9. On [REDACTED] 2010, Respondent returned the completed Form 1046 to the Department. Exhibit A, pages 28-29.
10. On the completed Form 1046, Respondent informed the Department that each of her children were receiving \$1,327.00 per month in RSDI and that she expected those payments to continue. Exhibit A, page 29.
11. From February 1, 2010, through March 31, 2010, the Department issued Respondent \$257.00 of FAP benefits per month based on her simplified reporting income estimates. Exhibit A, pages 30-45.
12. On March 28, 2018, the Department's OIG filed a hearing request to establish an IPV.
13. The Department's OIG requested that Respondent be disqualified from receiving FAP benefits for one year for a first alleged IPV.

14. The Department considers the alleged fraud period to be from February 1, 2010, through March 31, 2010. Exhibit A, pages 1-5.
15. During the alleged fraud period, Respondent was issued \$514.00 of FAP benefits, and the Department believes Respondent was not entitled to any FAP benefits during that time period. Exhibit A, page 4.
16. The Department is seeking to establish an overissuance of \$514.00. Exhibit A, page 4.
17. 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.

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 1, 2009), p. 1. When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1.

In this case, Respondent received more benefits than she was entitled to receive. The Department did not take into account the excess income from Respondent's job with [REDACTED] or from Respondent's children's RSDI from February 1, 2010, through March 31, 2010, when the Department calculated the amount of FAP benefits that Respondent was eligible to receive. As a result, the Department found Respondent eligible for more FAP benefits than she was eligible to receive, and the Department issued her more FAP benefits than she was eligible to receive. The Department showed by clear and convincing evidence that Respondent was overissued \$514.00 from February 1, 2010, through March 31, 2010.

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 their reporting responsibilities. BAM 720 (July 1, 2009) p. 1.

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, Respondent was a simplified reporter. Simplified reporting clients must report going over the applicable simplified reporting threshold in any month within the first ten days of the following month, which in this case was \$1,984.00. BAM 200 (August 1, 2008) page 1. The Department informed Respondent of the requirement, yet Respondent failed to report going over the threshold within the first ten days of any of the months after she went over the limit.

However, the Department did not present sufficient evidence to establish by clear and convincing evidence that Respondent committed an IPV. Rather, it appears that Respondent's failure to report the additional income was simply a case of negligence. As Respondent was a simplified reporter, reporting income was not something that she normally had to concern herself with. Her failure to do so and keep track of the total income is more appropriately viewed as an error of omission. Further bolstering that conclusion is the fact that Respondent was honest on all of the documents presented during the hearing. When asked about income in March of 2010, Respondent accurately reported her children's RSDI. Though Respondent violated the requirements of the program by failing to affirmatively report her income within ten days of the end of the month, the Department failed to show by clear and convincing evidence that such failure was intentional. Thus, the Department did not meet its burden of proof.

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, page 12. 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, page 13.

In this case, there was no IPV. Therefore, Respondent is not subject to a 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 not established, by clear and convincing evidence, that Respondent committed an IPV.
2. Respondent should not be disqualified from receiving FAP benefits.
3. Respondent received an overissuance of FAP benefits in the amount of \$514.00.

IT IS ORDERED THAT Respondent shall not be disqualified from FAP benefits.

IT IS FURTHER ORDERED that the Department is authorized to initiate recoupment and/or collection procedures for the total overissuance of \$514.00, less any amounts already recouped/collected.



JM/dh

John Markey
Administrative Law Judge
for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Mark Epps
4809 Clio Road
Flint, MI 48504

Genesee County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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