



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 12, 2018
MAHS Docket No.: 18-005343
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 Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on September 11, 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, 77 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-77.

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
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. On [REDACTED] 2015, Respondent applied for assistance from the Department with a FAP group including Antonio Camacho. Exhibit A, pp. 12-40.
2. On the application, Respondent indicated that the only income from employment in the household was from group member David. Exhibit A, p. 30.

3. On the application, Respondent acknowledged her duty to report an income or employment change for any group member within ten days of receiving the first paycheck. Exhibit A, p. 39.
4. The application further informed Respondent that if she intentionally failed to report a change in group circumstances and received benefits to which she was not entitled, she could be disqualified from the programs and be required to pay back any benefits wrongfully received. Exhibit A, p. 38-39.
5. On or about May 31, 2016, group member [REDACTED] began working for [REDACTED], and continued to work there until at least November 11, 2016. Exhibit A, pp. 58-59.
6. On August 15, 2016, the Department issued to Petitioner a Redetermination to collect relevant information regarding Respondent's continuing eligibility for FAP benefits. Exhibit A, pp. 52-57.
7. On [REDACTED], 2016, Respondent returned the completed Redetermination to the Department. Respondent reported on the completed Redetermination that the only group member with income was [REDACTED]. Exhibit A, p. 55.
8. Respondent signed the Redetermination, thereby certifying that all information contained within the Redetermination was truthful. Exhibit A, p. 57.
9. The Redetermination informed Respondent that if she was dishonest on the Redetermination or intentionally withheld information and received benefits to which she was not entitled, she could be disqualified from the program and be required to pay back any benefits wrongfully received. Exhibit A, p. 57.
10. From the time Respondent applied for benefits through at least November of 2016, Respondent never reported any group income from [REDACTED] to the Department.
11. Based on Respondent's failure to inform the Department of her income, the Department overissued Respondent FAP benefits. Exhibit A, pp. 64-77.
12. The Department's OIG filed a hearing request on May 14, 2018, to establish IPV disqualification. Exhibit A, p. 1.
13. This is Respondent's first IPV, and the OIG has requested that Respondent be disqualified from receiving FAP benefits for a period of one-year.
14. The OIG considers the fraud period to be August 1, 2016, through November 21, 2016.

15. The Department is not seeking a finding of an overissuance as the Department considers the debt to have been already established.
16. Respondent did not have any apparent mental physical impairment that would limit her understanding or ability to fulfill her reporting requirement.
17. 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.

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 1, 2016), page 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, 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 report changes in group's her circumstances to the Department within 10 days of the date of the change. BAM 105 (October 1, 2016), pages 11-12. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent failed to report that a group member, Antonio Camacho was employed or

had any income despite continuously working and receiving paychecks from May of 2016 through at least November of 2016.

Additionally, Respondent was required to completely and truthfully answer all questions in forms and in interviews. BAM 105, page 9. On [REDACTED] 2016, Respondent submitted a Redetermination to the Department and certified that the group member working and earning wages was [REDACTED]. However, at that time, [REDACTED] was working for [REDACTED] and had already received months of paychecks, with many more on the way. Thus, Respondent not only failed to timely report the change in income, she affirmatively misrepresented her group's income when filing the Redetermination with the Department.

Respondent's failure to report the income change to the Department must be considered an intentional misrepresentation to maintain her FAP benefits since Respondent knew or should have known that she was required to report the change to the Department and that reporting the change to the Department would have caused the Department to recalculate and reduce her group's FAP benefits. Further bolstering this conclusion is the fact that Respondent affirmatively misrepresented her group's income and employment on the [REDACTED], 2016, Redetermination. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her reporting requirements. 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, pages 15-16. 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 16.

In this case, there is no evidence that Respondent has ever been 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.

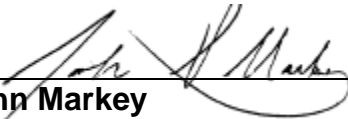
DECISION AND ORDER

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 her FAP benefits.
2. Respondent is subject to a one-year disqualification from receiving FAP benefits.

IT IS FURTHER ORDERED that Respondent shall be disqualified from receiving FAP benefits for a period of one year.

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

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

DHHS

Sharon Reuther
1720 East Main Street
Owosso, MI 48867

Shiawassee County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Respondent

[REDACTED]
[REDACTED]
[REDACTED]