



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: November 8, 2018
MAHS Docket No.: 18-007254
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 November 7, 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, 66 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-66.

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. In January of 2016, Respondent began working at [REDACTED]. He received his first paycheck for wages earned from [REDACTED] on or about [REDACTED].

January 6, 2016. From January 6, 2016, through at least December 30, 2016, Respondent earned and was paid approximately \$425 on a weekly basis. Exhibit A, pp. 21-23.

2. On [REDACTED] 2016, Respondent submitted to the Department an application for FAP benefits. On the application, Respondent indicated that he had no household income. Exhibit A, pp. 11-20.
3. Respondent signed the application and thereby certified that the information Respondent provided in the application was true. Further, Respondent acknowledged that he understood lying to the Department to get benefits could result in termination of her benefits, disqualification of future benefits, and the initiation of fraud proceedings against him. Exhibit A, p. 20.
4. On [REDACTED], 2017, Respondent returned to the Department a completed Redetermination. On the Redetermination, as on the previous application, Respondent failed to report that he was working and earning income from ACC. Exhibit A, pp. 30-37.
5. Respondent never reported the income or employment from ACC to the Department.
6. From February 16, 2016 through January 31, 2017, the Department issued Respondent \$2,227 of FAP benefits based on the income and expense information provided by Respondent. Exhibit A, pp. 65-66.
7. On July 16, 2018, the Department's OIG filed a hearing request to establish an IPV.
8. The Department's OIG requested that Respondent be disqualified from receiving FAP benefits for one year for a first alleged IPV.
9. The Department considers the alleged fraud period to be from February 16, 2016, through January 31, 2017. Exhibit A, pp. 1-5.
10. During the alleged fraud period, Respondent was issued \$2,227 of FAP benefits, and the Department believes Respondent was only entitled to \$519 during that time period. Thus, the Department believes Respondent received an overissuance of FAP benefits of \$1,708. Exhibit A, pp. 1-5, 38-64.
11. Respondent did not have any apparent mental or physical impairment that would limit his understanding or ability to fulfill his 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 2016), p. 1. 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.

In this case, Respondent received more benefits than he was entitled to receive. The Department determined Respondent's eligibility without budgeting his earnings from his employment with ACC, which caused Respondent's income to be understated. Respondent's unreported income reduced the amount of FAP benefits that Respondent was eligible to receive. The Department presented sufficient evidence to establish that Respondent was overissued \$1,708 of FAP benefits from February 16, 2016, through January 31, 2017.

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.

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 completely and truthfully answer all questions in forms and in interviews. BAM 105 (July 2015), p. 8. In January of 2016, Respondent began working for ACC. In January of 2016, ACC issued to Respondent numerous paychecks from Respondent's employment with ACC. On [REDACTED] 2016, Respondent submitted his FAP application to the Department and certified that he did not have a job or any income, which was a false statement. Additionally, Respondent submitted to the Department on [REDACTED], 2017, a Redetermination certifying that he did not have a job or any income. At the time he submitted both the application and the Redetermination to the Department, Respondent was working for ACC and had already received multiple paychecks. Thus, Respondent affirmatively misrepresented his household's income and employment status when filing his application for assistance with the Department and the subsequent Redetermination.

Respondent's failure to report the income and employment to the Department must be considered an intentional misrepresentation to obtain FAP benefits he was not entitled to, since Respondent knew or should have known that the inclusion of that income would have caused the Department to factor that income into the FAP calculation, leading to either a lesser amount of monthly FAP benefits or no FAP benefits at all. Just a few weeks after beginning to work for ACC, Respondent submitted the fraud-laden application. Respondent certified as true a blatantly untrue set of facts knowing full well the penalties for doing so. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his reporting requirement. 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 to indicate that Respondent was previously found guilty of an IPV related to her 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 Petitioner received an overissuance of FAP benefits in the amount of \$1,708 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 FURTHER ORDERED that Respondent shall be disqualified from receiving FAP benefits for a period of one year.

IT IS FURTHER ORDERED that the Department may initiate recoupment and/or collection procedures for the total overissuance amount of \$1,708 established in this matter less any amounts already recouped or 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

Kimberly Reed
609 North State Street
PO Box 278
Stanton, MI 48888

Montcalm County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED]