



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: November 21, 2018
MAHS Docket No.: 18-009159
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 20, 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, 119 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-119.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and/or Family Independence Program (FIP) 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 and/or FIP 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], 2016, Respondent submitted to the Department an application for benefits. On the application, Respondent indicated that she did not have any income or employment. Exhibit A, pp. 11-53.

2. Respondent signed the application and thereby certified that the information Respondent provided in the application was true and she understood her responsibility to report any changes to income or job status within 10 days after receiving her first paycheck. She also certified that she knew she was required to report when unemployment compensation income starts or stops. Further, Respondent acknowledged that she understood lying to the Department to get benefits or failing to report as required could result in termination of his benefits, disqualification from receipt of future benefits, and the initiation of fraud proceedings against her. Exhibit A, pp. 11-53.
3. On April 2, 2016, Respondent received unemployment compensation from the State of Michigan Unemployment Insurance Agency (UIA). The April 2, 2016 payment from UIA was on account of the two-week time period from March 13, 2016 through March 26, 2016. Exhibit A, p. 56.
4. Every two weeks from April 2, 2016 through at least August 6, 2016, Respondent was issued benefits from the UIA. Exhibit A, pp. 54-56.
5. Respondent never reported the new income to the Department.
6. On [REDACTED], 2016, Respondent submitted to the Department an application for benefits. On the application, Respondent indicated that she did not have any income or employment. Exhibit A, pp. 57-98.
7. Respondent signed the application and thereby certified that the information Respondent provided in the application was true and she understood her responsibility to report any changes to income or job status within 10 days after receiving her first paycheck. She also certified that she knew she was required to report when unemployment compensation income starts or stops. Further, Respondent acknowledged that she understood lying to the Department to get benefits or failing to report as required could result in termination of his benefits, disqualification from receipt of future benefits, and the initiation of fraud proceedings against her. Exhibit A, pp. 57-98.
8. On April 13, 2016, Respondent began working for [REDACTED]. She received her first paycheck on April 22, 2016. Each week from April 22, 2016 through August 26, 2016, Respondent received a paycheck from [REDACTED] averaging about \$200 per week gross. Exhibit A, pp. 99-101.
9. Respondent never reported the new income or employment to the Department.
10. From May 1, 2016, through July 31, 2016, the Department issued Respondent \$3,470 of FAP benefits. The benefit amounts were calculated without taking into consideration Respondent's unreported income from the UIA or her job with [REDACTED]. Exhibit A, pp. 102-110, 118.

11. From May 1, 2016, through August 31, 2016, the Department issued Respondent \$2,122 of FIP benefits. The benefit amounts were calculated without taking into consideration Respondent's unreported income from the UIA or her job with [REDACTED]. Exhibit A, pp. 111-117, 119.
12. On August 10, 2018, the Department's OIG filed a hearing request to establish an IPV. Exhibit A, pp. 1-2.
13. The Department's OIG requested that Respondent be disqualified from receiving FAP and FIP benefits for one year for a first alleged IPV. Exhibit A, pp. 1-4.
14. The Department considers the alleged fraud period with respect to FAP to be from May 1, 2016, through July 31, 2016. Exhibit A, p. 3.
15. The Department considers the alleged fraud period with respect to FAP to be from May 1, 2016, through August 31, 2016. Exhibit A, p. 3.
16. During the alleged fraud period, Respondent was issued \$3,470 of FAP benefits, and the Department believes Respondent was only entitled to \$1,717 during that time period. Thus, the Department is seeking to establish an overissuance of FAP benefits of \$1,753. Exhibit A, pp. 3, 102-110, 118.
17. During the alleged fraud period, Respondent was issued \$2,122 of FIP benefits, and the Department believes Respondent was only entitled to no FIP benefits during that time period. Thus, the Department is seeking to establish an overissuance of FIP benefits of \$2,122. Exhibit A, pp. 3, 111-117, 119.
18. In total, the Department is seeking to establish an overissuance of FAP and FIP benefits in the amount of \$3,875.
19. Respondent did not have any apparent mental or physical impairment that would limit her understanding or ability to fulfill her reporting requirements. Exhibit A, pp. 21-22.

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 she was entitled to receive. The Department determined Respondent's eligibility without budgeting her income from the UIA or wages from her employment with ██████████ which caused Respondent's income to be grossly understated. Respondent's unreported income reduced the amount of FAP benefits that Respondent was eligible to receive while rendering her completely ineligible for any FIP benefits. The Department presented sufficient evidence to establish that Respondent was overissued \$1,753 in FAP benefits from May 1, 2016, through July 31, 2016. Likewise, the Department presented sufficient evidence to establish that Respondent was overissued \$2,122 in FIP benefits from May 1, 2016 through August 31, 2016. Thus, the Department has established a total overissuance of FAP and FIP benefits totaling \$3,875.

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 report changes in her circumstances to the Department within 10 days of the date of the change. BAM 105 (July 2015), p. 10-11. The Department clearly and correctly instructed Respondent to report changes in income or employment to the Department within 10 days at the time of the first application, ██████████, 2016.

On April 2, 2016, Respondent received her first check from UIA. Respondent failed to ever report that she began receiving UIA benefits, despite specifically acknowledging on her application her duty to report that income. Additionally, Respondent began working for ██████ on April 13, 2016 and received her first paycheck on April 22, 2016. Every two weeks after starting UIA benefits and every week after starting to receive paychecks from ██████, Respondent received income from those sources. At no point did Respondent report either sources of income to the Department despite continuously receiving UIA benefits and paychecks through the end of the fraud period.

Additionally, Respondent was required to completely and truthfully answer all questions in forms and in interviews. BAM 105, p. 8. On April 12, 2016, Respondent submitted an application for benefits to the Department and certified that nobody in the house had a job or income. However, at that time, Respondent had already received a payment from UIA and was receiving consistent benefits from UIA every two weeks thereafter. Thus, Respondent not only failed to timely report the changes in income and employment, she affirmatively misrepresented her income when filing a subsequent application with the Department.

Respondent's failure to report the income or employment change to the Department must be considered an intentional misrepresentation to maximize her FAP and FIP 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 FAP and FIP benefits. Further bolstering this conclusion is the fact that Respondent affirmatively misrepresented her employment and income status on the subsequent application. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her 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, pp. 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, p. 16.

In this case, there is no indication in the record that Respondent was previously found guilty of an IPV related to FAP or FIP benefits. Thus, this is Respondent's first IPV related to FAP benefits and first IPV related to FIP benefits. Therefore, Respondent is subject to a one-year disqualification from receiving FAP benefits and a one-year disqualification from receiving FIP benefits.

DECISION AND ORDER

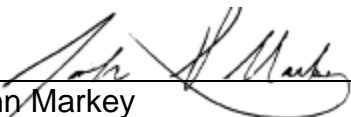
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to her FAP benefits.
2. The Department has established by clear and convincing evidence that Respondent received an overissuance of FAP benefits in the amount of \$1,753 that the Department is entitled to recoup and/or collect.
3. Respondent is subject to a one-year disqualification from receiving FAP benefits.
4. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to her FIP benefits.
5. The Department has established by clear and convincing evidence that Respondent received an overissuance of FIP benefits in the amount of \$2,122 that the Department is entitled to recoup and/or collect.
6. Respondent is subject to a one-year disqualification from receiving FIP benefits.

IT IS FURTHER ORDERED that Respondent shall be disqualified from receiving FAP and FIP 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 \$3,875 established in this matter less any amounts already recouped or collected.

JM/nr



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

Denise McCoggle
27260 Plymouth Rd
Redford, MI
48239

Wayne 15 County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
PO Box 30062
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Respondent

[REDACTED]