



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: August 16, 2019
MOAHR Docket No.: 19-004572
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 August 5, 2019, from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and represented himself.

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?
3. Did Respondent receive an overissuance (OI) of FAP benefits that the Department is entitled to recoup?

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 \$1,237 in monthly FAP benefits issued by the Department in March 20, 2017 to October 31, 2017 (Exhibit A, pp. 52-53). The calculation of FAP benefits was based on Respondent's receipt of \$0 in income.

2. Respondent was employed by, and received income from, [REDACTED] (Employer 1) from March 3, 2017 to June 16, 2017 and [REDACTED] (Employer 2) from June 23, 2017 to October 27, 2017 (Exhibit A, pp. 40-41).
3. Respondent was aware of the responsibility to report changes in income.
4. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. The Department's OIG filed a hearing request on April 25, 2019, alleging that Respondent committed an IPV concerning his FAP benefits by failing to report his employment with Employer 1 and Employer 2 and, because his employment income was not considered in determining his FAP eligibility and allotment at the time of issuance, he received a FAP OI totaling \$1,029.
6. Respondent has no prior FAP IPV disqualifications.
7. 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.

IPV

Effective October 1, 2014, the Department's OIG requests IPV hearings for cases involving alleged fraud of FAP benefits resulting in a FAP OI in excess of \$500. BAM 720 (October 2017), p. 5. 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).

To establish an IPV, the Department must present clear and convincing evidence that the household member committed, and intended, to commit the IPV. 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). For an IPV based on inaccurate reporting, Department policy requires that the individual also have been clearly and correctly instructed regarding his or his reporting responsibilities and have no apparent physical or mental impairment that limits his or his understanding or ability to fulfill reporting responsibilities. BAM 720, p. 1.

In this case, the Department alleges that Respondent committed an IPV because he intentionally withheld information concerning his employment income in order to receive or maintain FAP benefits from the State of Michigan. Employment income received by the client is considered in the calculation of a client's FAP eligibility and amount. 7 CFR 273.9; 7 CFR 273.10(c); BEM 556 (July 2013), pp. 2-6. FAP recipients who are not simplified reporters are required to report starting employment. 7 CFR 273.12(a)(1); BAM 105 (July 2015), pp. 10-11.

In support of its IPV case against Respondent, the Department presented (i) an application Respondent submitted to the Department on March 19, 2017 in which he reported no employment and certified that the answers he had provided were correct and complete (Exhibit A, pp. 17, 21); (ii) income information from Employer 1 showing that Respondent had earnings from Employer 1 from March 3, 2017 to June 16, 2017 (Exhibit A, p. 40); (iii) income information from Employer 2 showing that Respondent had earnings from Employer 2 from June 23, 2017 to October 21, 2017 (Exhibit A, pp. 40-41); (iv) a spreadsheet that pulled information concerning Respondent's FAP case from Bridges, the Department's electronic database, and showed that Respondent received FAP benefits from March 20, 2017 to October 31, 2017 (Exhibit A, p. 57); and (vi) FAP OI budgets for the months from March 2017 through October 2017 that the Department alleges Respondent received a FAP OI showing the calculation of FAP benefits Respondent would have been eligible to receive if the alleged unreported income had been included in determining his FAP eligibility and allotment at the time of issuance (Exhibit A, pp. 54-61).

The evidence presented showed that Respondent was employed by Employer 1 at the time he submitted the March 19, 2017 application to the Department, but he did not report his employment to the Department at any time between March 19, 2017 and October 31, 2017. As a result, Respondent received FAP benefits he was ineligible to receive. Respondent did not dispute any of the evidence presented by the Department. The Department provided clear and convincing evidence to support its allegations that Respondent intentionally withheld information concerning his employment income for the purpose of obtaining and maintaining FAP benefits.

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. As discussed

above, the Department has established by clear and convincing evidence that Respondent committed an IPV. No evidence of any prior FAP IPVs was presented. Because this was Respondent's first FAP IPV, he is subject to a one-year disqualification from receipt of FAP benefits.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. 7 CFR 273.18(a)(2); BAM 700, p. 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. 7 CFR 273.18(c)(1); BAM 720, p. 8; BAM 715 (October 2017), p. 6; BAM 705 (October 2018), p. 6.

In this case, the Department alleges that, although Respondent received FAP benefits totaling \$1,237 from March 20, 2017 to October 31, 2017, he was eligible for only \$208 during this period. To establish the FAP OI amount, the Department presented monthly FAP OI budgets for March 2017 to October 2017 to show the FAP benefits Respondent was eligible to receive if his unreported income had been included in the calculation of his FAP eligibility for each month. A review of the FAP OI budgets for these months shows that the Department properly considered Respondent's actual income for those months. Because Respondent did not timely report his employment income, he was not eligible for the 20% earned income deduction in the calculation of the household's net income. 7 CFR 273.18(c)(1); BAM 720, p. 10. A review of Respondent's recalculated income in the FAP OI budgets shows that, when Respondent's income from employment at Employer 1 and Employer 2 is taken into consideration in determining his FAP eligibility, he was eligible for \$208 in FAP benefits. Thus, he was overissued \$1,029 in FAP benefits, the difference between the \$1,237 he was issued and the \$208 he was eligible to receive, and the Department is entitled to repayment of \$1,029.

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.
2. Respondent did receive an OI of FAP benefits in the amount of \$1,029.

It is **ORDERED** the Department initiate recoupment and/or collection procedures for the amount of \$1,029 in accordance with Department policy, less any amounts the Department has already collected and/or recouped.

It is **FURTHER ORDERED** that Respondent be personally disqualified from FAP for a period of **12 months**.



AE/tm

Alice C. Elkin

Administrative Law Judge

for Robert Gordon, Director

Department of Health and Human Services

cc: IPV-Recoupment Mailbox
L. Bengel

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

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

DHHS

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

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

cc: IPV-Recoupment Mailbox

[REDACTED]