



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: September 16, 2019
MOAHR Docket No.: 19-004636
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 September 5, 2019 from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG), and [REDACTED] Section Manager of the OIG. Respondent appeared and represented herself. During the hearing, a 97-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-97.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and/or Child Development and Care (CDC), and/or Medicaid (MA) 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) with respect to FAP, MA, and CDC?
3. Should Respondent be disqualified from receiving FAP benefits?¹

¹ The Department initially requested a CDC disqualification. However, during the hearing, the Department stated that it was no longer pursuing a CDC disqualification in this matter.

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 an ongoing recipient of FAP, CDC, and MA benefits in a group that included herself, her husband, and their three children. Respondent and her husband both worked for [REDACTED] and together earned approximately \$2,100 per month. Exhibit A, pp. 41-43.
2. On [REDACTED], 2015, the Department issued to Respondent a Redetermination form to gather relevant information regarding Respondent's ongoing eligibility for benefits. Respondent was required to complete the form and return it to the Department. Exhibit A, pp. 12-17.
3. In October 2015, Respondent received a job offer from [REDACTED].
4. On [REDACTED] 2015, Respondent returned the completed Redetermination form to the Department. On the form, she did not report any income. Exhibit A, pp. 12-17.
5. On October 26, 2015, Respondent began working for [REDACTED] in a full-time capacity. Respondent was first paid on November 13, 2015. For the entire relevant time period thereafter, Respondent was paid on a bi-weekly basis. In November 2015, Respondent had earnings of \$5,538.48. In December 2015, Respondent had earnings of \$5,692.32. In January 2016, Respondent had earnings of \$5,615.40. In February 2015, Respondent had earnings of \$7,664.18. In March 2016, Respondent had earnings of \$5,615.40. In April 2016, Respondent had earnings of \$5,615.40. Respondent's household had additional earnings on account of Respondent's husband's job with [REDACTED] Exhibit A, pp. 34-36.
6. On [REDACTED], 2015, [REDACTED] 2015, and [REDACTED] 2016, the Department issued to Respondent a Notice of Case Action informing Respondent that she was approved for monthly FAP and CDC benefits. The Notices of Case Action stated that her monthly benefits were based on a monthly income of \$2,100. Further, Respondent was informed that the income limit for eligibility for CDC benefits was \$5,744 and for FAP benefits was \$3,078. Respondent was informed that she had a responsibility to report when her monthly income exceeded either of those limits within the first 10 days of the following month. Respondent was informed that failure to report changes may make her liable for penalties for fraud. Exhibit A, pp. 18-33.
7. Respondent never reported her income or employment with [REDACTED] to the Department.

8. Respondent was approved for and received FAP, CDC, and MA benefits based on the information Respondent provided. From January 1, 2016 through March 31, 2016, Respondent received FAP and MA benefits that were calculated without consideration of her concealed income from [REDACTED]. From January 1, 2016 through April 30, 2016, Respondent received CDC benefits that were calculated without consideration of Respondent's concealed income from [REDACTED]. Exhibit A, pp. 1-9; 38-40; 44-46.
9. On May 1, 2019, the Department's OIG filed a hearing request to establish an IPV with respect to FAP, CDC, and MA. The Department's OIG requested that Respondent be disqualified from receiving FAP benefits for one year for a first alleged IPV. The Department considers the alleged fraud period with respect to CDC to be January 1, 2016 through April 30, 2016. During the fraud period, the Department issued to Respondent \$3,245 in CDC benefits. The Department considers the alleged fraud period with respect to FAP and MA to be January 1, 2016 through March 31, 2016. During the fraud period, the Department issued to Respondent \$1,431 in FAP benefits and \$559.17 in MA benefits. The Department is seeking to establish a \$3,245 overissuance of CDC benefits, a \$1,431 overissuance of FAP benefits, and a \$559.17 overissuance of MA benefits received during the fraud period. Exhibit A, pp. 1-9, 38-40; 44-46.
10. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Service as undeliverable.
11. 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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department

of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10 and MCL 400.105-.112k.

The Child Development and Care (CDC) program is established by Titles IV-A, IV-E and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

The Department's position is that Respondent committed an IPV with respect to FAP, CDC, and MA by failing to report a change in income leading to the overissuance of FAP benefits. The Department contends that the material omission led the Department to overissue to Respondent \$1,431 in FAP benefits and \$559.17 in MA benefits for the period from January 1, 2016 through March 31, 2016 and \$3,245 in CDC for the period from January 1, 2016 through April 30, 2016.

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; 7 CFR 273.18. 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; 7 CFR 273.18.

In this case, Respondent received more benefits than she was entitled to receive. The Department determined Respondent's eligibility without budgeting Respondent's concealed income from her employment with [REDACTED] which caused Respondent's household income to be understated. Properly factoring into the equation the household's unreported income rendered Respondent completely ineligible for all benefits Respondent received during the alleged fraud period. The Department established that Respondent was not entitled to any FAP, MA, or CDC benefits from January 1, 2016 through April 30, 2016. The Department issued to Respondent a total of \$1,431 in FAP benefits, \$559.17 in MA benefits, and \$3,245 in CDC benefits during that period. Thus, the Department has shown that it overissued \$1,431 of FAP benefits and \$559.17 in MA benefits from January 1, 2016, through March 31, 2016 and \$3,245 in CDC benefits from January 1, 2016 through April 30, 2016.

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; 7 CFR 273.16(c).

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 her household's circumstances to the Department within 10 days of the date of the change. BAM 105 (April 2014), pp. 11-12; 7 CFR 273.12(a)(1)-(2). The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days on at least three separate documents that are part of the record in this matter. Additionally, Respondent was directed to report both when her household income exceeded \$3,078 in any given month or when her household income exceeded \$5,744 in any given month.

Starting in November 2015, Respondent's income exceeded those limits every month through at least the end of the fraud period. Respondent failed to report that she became employed or had any new income despite her continuously working and receiving paychecks from November 13, 2015 through at least the end of the fraud period.

Respondent's failure to report the income or employment change to the Department must be considered an intentional omission to maintain her 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 benefits. Respondent was repeatedly informed that she was required to report any changes to her income and given clear instructions on how to do so. Just one day after submitting the Redetermination with no mention of the new job, Respondent began working full-time for [REDACTED]. The timing of the submission of the Redetermination then the start of the job strongly suggests that this was a calculated effort to defraud the Department. It is clear that Respondent knew of the reporting and disclosure requirements and had an intent to deceive the Department regarding her income in order to maximize her benefits. The Department has proven by clear and convincing evidence that Respondent committed an Intentional Program Violation.

Respondent appeared and the hearing and asserted that she in fact did report the new income to the Department. However, the evidence presented by Respondent does not support such a finding.

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; 7 CFR 273.16(b). 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 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, CDC, and MA benefits.
2. The Department has established by clear and convincing evidence that Respondent received an overissuance of FAP benefits in the amount of \$1,431 that the Department is entitled to recoup and/or collect.
3. The Department has established by clear and convincing evidence that Respondent received an overissuance of CDC benefits in the amount of \$3,245 that the Department is entitled to recoup and/or collect.
4. The Department has established by clear and convincing evidence that Respondent received an overissuance of MA benefits in the amount of \$559.17 that the Department is entitled to recoup and/or collect
5. Respondent is subject to a one-year disqualification from receiving FAP benefits.


IT IS ORDERED that the Department shall initiate recoupment/collection procedures for the FAP overissuance amount of \$1,431 in accordance with Department policy, less any amounts already recouped or collected.

IT IS FURTHER ORDERED that the Department shall initiate recoupment/collection procedures for the CDC overissuance amount of \$3,245 in accordance with Department policy, less any amounts already recouped or collected

IT IS FURTHER ORDERED that the Department shall initiate recoupment/collection procedures for the MA overissuance amount of \$559.17 in accordance with Department policy, less any amounts already recouped or collected

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

JM/cg



John Markey
Administrative Law Judge
for Robert Gordon, 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 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

Via Email:

MDHHS-19-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

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