



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 19, 2019
MOAHR Docket No.: 19-006245
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 did not appear at the hearing, and it was held in Respondent's absence pursuant to 7 CFR 273.16(e).

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 \$1,162 in monthly FAP benefits issued by the Department from June 1, 2017 to November 30, 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) beginning April 26, 2017 (Exhibit A, pp. 19-21).
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 June 10, 2019, alleging that Respondent committed an IPV concerning her FAP benefits by failing to report her employment with Employer 1 and, because her employment income was not considered in determining her FAP eligibility and allotment at the time of issuance, she received a FAP OI totaling \$1,066.
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 her or her reporting responsibilities and have no apparent physical or mental impairment that limits her or her understanding or ability to fulfill reporting responsibilities. BAM 720, p. 1.

In this case, the Department alleges that Respondent committed an IPV because she intentionally withheld information concerning her 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) a redetermination Respondent submitted to the Department on March 3, 2017 in which she reported no employment and certified that the answers she 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 April 26, 2017 to March 28, 2018 (Exhibit A, pp. 19-21); (iii) 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 June 1, 2017 to November 30, 2017 (Exhibit A, p. 35); and (iv) FAP OI budgets for the months between June 2017 and November 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 her FAP eligibility and allotment at the time of issuance (Exhibit A, pp. 22-34). The OIG agent testified that the Department's case for Respondent referenced both of the last names shown in the documentation and both referred to the same Respondent.

The evidence presented showed that Respondent began employment with Employer 1 on April 26, 2017, less than two months after she submitted her redetermination to the Department, but she did not report her employment to the Department until the Department discovered the employment pursuant to a wage match, the Department's cross-match with information from other state agencies, and requested verification of the income. See BAM 802 (April 2017), pp. 1-3. Based on this unreported income, Respondent received FAP benefits she was ineligible to receive. However, in order to establish an IPV, the Department must show that Respondent was clearly advised of her responsibility to report changes in income and that she intentionally withheld information concerning her employment income. 7 CFR 273.16(e)(6) and BAM 720, p. 1. At the time she submitted her redetermination, Respondent accurately reported that she had no income. The Department presented no evidence to show that Respondent was made aware that her FAP benefits were based on \$0 in income or that she was

notified of her responsibility to report changes in income to the Department. Under these circumstances, the Department has failed to present clear and convincing evidence that Respondent intentionally withheld information concerning her employment income for the purpose of obtaining and maintaining FAP benefits. Thus, the Department has failed to establish that Respondent committed a FAP IPV.

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 not established by clear and convincing evidence that Respondent committed an IPV. Thus, Respondent is not subject to a FAP IPV.

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 \$1,162 from June 1, 2017 to November 30, 2017, she was eligible for only \$96 during this period. To establish the FAP OI amount, the Department presented monthly FAP OI budgets for June 2017 to November 2017 to show the FAP benefits Respondent was eligible to receive if her unreported income had been included in the calculation of her 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 her employment income, she 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 is taken into consideration in determining her FAP eligibility, she was eligible for \$96 in FAP benefits. Thus, she was overissued \$1,066 in FAP benefits, the difference between the \$1,162 she was issued and the \$96 she was eligible to receive, and the Department is entitled to repayment of \$1,066.

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 not** established by clear and convincing evidence that Respondent committed an IPV.

2. Respondent did receive an OI of FAP benefits in the amount of \$1,066.

It is **ORDERED** the Department initiate recoupment and/or collection procedures for the amount of \$1,066 in accordance with Department policy, less any amounts the Department has already collected and/or recouped.

It is **FURTHER ORDERED** that the Department's request to disqualify Respondent from FAP is **DENIED**.



AE/tm

Alice C. Elkin

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

Petitioner

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

DHHS

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

Respondent

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

cc: IPV-Recoupment Mailbox

[REDACTED]