



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: October 11, 2019
MOAHR Docket No.: 19-006268
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 Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on October 7, 2019, from Detroit, Michigan. The Department was represented by Allyson Carneal, 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, a 125-page packet of documents was offered and admitted into evidence as Department's Exhibit A, pp. 1-125.

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) with respect to the Food Assistance Program (FAP)?
2. 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. On January 9, 2017, Respondent submitted to the Department a completed Redetermination form in order to renew his FAP benefits. Respondent was approved for continuing FAP benefits. Respondent's FAP group of four consisted of himself, [REDACTED], and two others. The Department's Notice of Case Action informed Respondent that the group's FAP benefits were based off Respondent having monthly income of approximately \$1,480, all of which was

attributable to [REDACTED] employment with [REDACTED]. Exhibit A, pp. 12-19.

2. The January 20, 2017 Notice of Case Action informed Respondent that he was a simplified reporter and stated, "Effective the date of this notice, the only change you are required to report for the Food Assistance program is: WHEN YOUR HOUSEHOLD INCOME EXCEEDS THE LIMIT LISTED BELOW." Immediately under that directive was an income limit of \$2,633. Exhibit A, pp. 20-23.
3. On June 15, 2017, [REDACTED] received his first paycheck from her employment with [REDACTED]. [REDACTED] continued working for [REDACTED] continuously through at least sometime in March of 2019. [REDACTED] income from [REDACTED] combined with her other income from [REDACTED] together greatly exceeded the simplified reporting limit of \$2,633 nearly every month from July 2017 through at least March 2019. Exhibit A, pp. 69-116.
4. On June 23, 2017, Respondent submitted to the Department a completed Semi-Annual Contact Report form. On the form, Respondent was asked "[h]as your household's gross income (including earnings from self-employment) changed by more than \$100 from the amount above." Despite the household having substantially increased income from [REDACTED] new employment, Respondent dishonestly indicated that his household's earned income had not changed. Respondent signed the form, certifying that the information contained in the form was true and correct to the best of his knowledge. Exhibit A, pp. 43-44.
5. On documents submitted to the Department on January 23, 2018 and September 4, 2018, Respondent repeatedly misrepresented his household's income. Exhibit A, pp. 54-68.
6. From July 1, 2017 through March 31, 2019, the Department issued to Respondent \$6,385 in FAP benefits. Respondent was entitled to receive only \$1,058 in FAP benefits during that period. The Department has already established that Respondent received an overissuance of FAP benefits totaling \$5,006. Exhibit A, pp. 1-8.
7. On [REDACTED], 2019, the Department's OIG filed a hearing request to establish an IPV with respect to FAP. 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 to be July 1, 2017 through March 31, 2019. Exhibit A, pp. 1-8.
8. 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.
9. 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.

The Department's position is that Respondent committed an IPV with respect to FAP by failing to report when his household's income exceeded the simplified reporting limit and then misrepresented his household's income on subsequently submitted documents.

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 he was entitled to receive. The Department determined Respondent's eligibility without budgeting his household's true wages, which caused Respondent's household income to be understated. Respondent's unreported income reduced the amount of FAP benefits that Respondent was eligible to receive. Prior to the hearing in this matter, the Department had already established that Respondent was overissued \$5,006 of FAP benefits from July 1, 2017 through March 31, 2019.

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 a simplified reporter. Simplified reporting groups are required to report changes only when the group's actual monthly income exceeds the simplified reporting limit for the group. BAM 200 (January 2017), p. 1. In this case, Respondent was informed via the January 20, 2017 Notice of Case Action that the simplified reporting limit for his group was \$2,633. Starting in July 2017, Respondent's household income exceeded that amount every month through at least March 2019. Yet at no point did Respondent report to the Department that his household income exceeded the limit while still receiving benefits based on the lower income information that Respondent had provided to the Department.

Additionally, Respondent was required to completely and truthfully answer all questions in forms and in interviews. BAM 105 (April 2016), p. 9. On at least three occasions after the household started receiving the additional income, Respondent misrepresented the employment and income status of the members of his household. On the household income section of the forms, Respondent indicated that his total household gross income had not changed by \$100 per month. No mention was made of the fact that [REDACTED] was working for [REDACTED], which resulted in the household's income increasing by substantially more than \$100 per month. Thus, Respondent not only failed to timely report going over the simplified reporting limit, he affirmatively misrepresented his household's income and employment status when filing subsequent documents with the Department.

Respondent's failure to report a substantial increase in income to the Department must be considered an intentional misrepresentation to maintain his FAP benefits since Respondent knew or should have known that he 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 his FAP benefits. Further bolstering this conclusion is the fact that Respondent affirmatively misrepresented his household's employment and income status on the subsequent submissions. 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, 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, the record shows that Respondent was previously found to have committed an IPV related to FAP benefits. Exhibit A, p. 123. Thus, this is Respondent's second IPV related to FAP benefits. Therefore, Respondent is subject to a two-year disqualification from receiving FAP benefits.

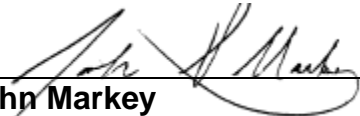
DECISION AND ORDER

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. Respondent is subject to a two-year disqualification from receiving FAP benefits.

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

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-Kalamazoo-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

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