



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: November 21, 2019
MOAHR Docket No.: 19-007006
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 October 23, 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), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

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?

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 FAP benefits issued by the Department. From May 1, 2018 through September 30, 2018, (FAP fraud period), Respondent was issued \$3200 in FAP benefits by the State of Michigan and the Department alleges that Respondent was entitled to \$1124 in such benefits during this time period, resulting in a FAP OI of \$2076.

2. On [REDACTED], 2017, Respondent signed and submitted an assistance application to receive FAP benefits. In signing the application, Respondent acknowledged being aware of the responsibility to accurately report her circumstances and to report changes in her circumstances to the Department, including changes in employment and income. (Exhibit A, pp.11-36)
 - a. At the time of the application, Respondent reported that she was unemployed as of September 15, 2017 and that she has found another job, but it does not start until October 30th. Respondent did not have any earned income at the time of the application.
3. The Department sent Respondent a Notice of Case Action dated November 1, 2017, notifying her that her application for FAP benefits had been approved and that her household's FAP benefits were determined based on \$0 in reported earned income. The Notice of Case Action again advised Respondent of her reporting responsibilities. (Exhibit A, pp. 40-43)
4. The Department had no reason to believe that Respondent had a physical or mental impairment that would limit her understanding or ability to fulfill her reporting requirements.
5. The Department obtained verification of Respondent's employment and earnings through the Work Number, showing that her employment began on March 2, 2018, that her first pay date was March 16, 2018, and that she continued to be employed and earning income throughout the fraud period. (Exhibit A, pp. 37-39)
6. The Department's OIG filed a hearing request on or around June 18, 2019, alleging that Respondent intentionally failed to report her earned income, and as a result received FAP benefits that she was ineligible to receive, causing a FAP OI of \$2076.
7. This was Respondent's first alleged IPV and the Department requested that Respondent be disqualified from receiving FAP benefits for 12 months.
8. The Department has established a client error FAP OI claim in the amount of \$2076. (Exhibit A, pp. 45)
9. A Notice of Hearing was mailed to Respondent at her last known address and was not returned by the US Post Office 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.

As a preliminary matter, although the Department presented evidence in support of a FAP OI in the amount of \$2076, the Department presented evidence that a client error caused OI had previously been established in this matter. Thus, because a client error OI has already been established in this matter, a decision will not be issued on the OI of \$2076 for the FAP fraud period. The Department proceeded with its hearing request regarding the alleged IPV and FAP disqualification.

Intentional Program Violation

Effective October 1, 2014, the Department's OIG requests IPV hearings for cases involving alleged fraud of FAP benefits in excess of \$500. BAM 720 (October 2017), p. 5, 12-13. 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). For an IPV based on inaccurate reporting, Department policy requires that an OI, and all three of the following exist: the client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and the individual was also clearly and correctly instructed regarding his or her reporting responsibilities and the individual have no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 720, p. 1.

To establish an IPV, the Department must present clear and convincing evidence that the household member committed, and intended, to commit the IPV or intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. 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)

In this case, the Department alleges that Respondent committed an IPV because she failed to timely report to the Department that she was employed and earning income, causing an overissuance. Clients must completely and truthfully answer all questions on forms and in interviews. Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes such as starting or stopping employment, earning income, and starting or stopping a source of unearned income must be reported within ten days of receiving the first payment reflecting the change. BAM 105 (Oc January 2018), pp. 9-12; 7 CFR 273.12(a)(1); 7 CFR 273.21.

The Department contended that Respondent's failure to timely report the employment and earned income caused an OI of FAP benefits in the amount of \$2076 from May 1, 2018 to September 30, 2018. The Department presented evidence from Respondent's employer, showing that Respondent's employment began on March 2, 2018, that her first pay date was March 16, 2018, and that she continued to be employed and earning income throughout the fraud period.

In support of its contention that Respondent committed an IPV, the Department presented an assistance application completed by Respondent and submitted to the Department on [REDACTED], 2017. Although this was completed prior to the alleged fraud period and before her employment start date, in signing and completing the application, Respondent acknowledged being aware of the responsibility to accurately report her circumstances and to report changes in her circumstances to the Department, including changes in employment and income. On the application, Respondent reported that she was currently unemployed but would be beginning a new job at the end of the application month. A Notice of Case Action dated November 1, 2017, further advised Respondent of her reporting responsibilities and notified her that her household was approved for FAP benefits based on \$0 in budgeted earned income.

The Department's evidence showed that despite being advised of her reporting responsibilities with respect to her income and employment on more than one occasion, as well as the penalties for failing to do so, Respondent failed to report to the Department that she gained employment and was earning income. Because Respondent failed to accurately and timely report her employment and income to the Department, the Department's evidence establishes, by clear and convincing evidence that Respondent intentionally withheld information for the purpose of establishing or maintaining benefit eligibility and as such, committed an 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. A disqualified recipient remains a member of an active group as long as he or she lives with them, and other eligible group members may continue to receive benefits. 7 CFR 273.16(b)(11); BAM 720, p. 16. As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV of the FAP. No evidence of

any prior FAP IPVs was presented. Because this was Respondent's first FAP IPV, she is subject to a one-year disqualification from receipt of 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 of the FAP.

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

ZB/tm



Zainab A. Baydoun

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

DHHS

Denise Croff
301 E. Louis Glick Hwy.
Jackson, MI
49201

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

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

cc: IPV-Recoupment Mailbox
L. Bengel