



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 22, 2019
MOAHR Docket No.: 19-008224
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 November 21, 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. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e). During the hearing, a 61-page packet of documents was offered and admitted as into evidence as Exhibit A, pp. 1-61.

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 [REDACTED], 2015, Respondent submitted to the Department an application for FAP benefits. Exhibit A, pp. 13-21.
2. On the application, Respondent indicated that he had no income. Exhibit A, p. 17.

3. Included with the application was a set of instructions entitled "Things You Must Do." The instructions clearly informed Respondent that he was required to give complete and honest information and report certain types of changes in circumstances to the Department within ten days of the change. Regarding starting employment, Respondent was informed that he was required to report the change to the Department within ten days of receiving his first payment. Further, the instructions stated that intentionally providing false information or failing to properly report a change could result in penalties for fraud. Exhibit A, p. 21.
4. Respondent signed the application, thereby certifying that all of the information was truthful and acknowledging that he read, understood, and agreed with his responsibilities, including those responsibilities found in the "Things You Must Do" instructions. Exhibit A, p. 20.
5. On March 4, 2015, the Department issued to Respondent a Notice of Case Action informing Respondent that his application for FAP benefits was approved and that his benefits were calculated based on Respondent's assertion that he had no income. The document contained a section entitled "Reporting Changes" that directed Respondent to report any change in income within ten days of receiving his first paycheck. Included with the Notice of Case Action was a document entitled "Change Report," which was provided for Respondent to fill out and submit to the Department should he have a change that needed to be reported. Exhibit A, pp. 22-27.
6. On or about April 24, 2015, Respondent began working for [REDACTED] Respondent worked for and received wages from [REDACTED] consistently from that date through the end of January 2016. Exhibit A, pp. 35-40.
7. On January 11, 2016, the Department issued to Respondent a Redetermination in order to gather relevant information regarding Respondent's ongoing eligibility for FAP benefits. In the "Income Source" section, Respondent was required to provide to the Department information related to any income received from any source and to provide proof of the same over the previous 30 days. Respondent indicated that he had no income or employment despite the fact that he was employment at [REDACTED] and received at least three paychecks during the 30 days preceding his submission of the Redetermination form to the Department. Respondent signed the form, which certified that all information contained therein was truthful, and returned it to the Department on January 26, 2016. Exhibit A, pp. 28-33.

8. From June 1, 2015 through January 31, 2016, the Department issued to Petitioner \$1,552 in FAP benefits. Respondent was only entitled to receive \$16 during that period. The Department has already established that Respondent received an overissuance of FAP benefits totaling \$1,536. Exhibit A, pp. 59-61.
9. On July 11, 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 June 1, 2015 through January 31, 2016. Exhibit A, pp. 1-10.
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 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 timely report and misrepresenting his employment and income. The Department seeks an order disqualifying Respondent from receiving FAP benefits for one year for a first alleged IPV.

Overissuance

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (May 2014), 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 Respondent's wages from his employment with ██████████, which caused Respondent's income to be

understated. When factored into the calculation, the 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 \$1,536 of FAP benefits from June 1, 2015 through January 31, 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 (October 2015), 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 his group'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 at the time of the application. Respondent failed to report that he became employed or had any new income despite continuously working and receiving paychecks while collecting FAP benefits based on his reported income of \$0.

Additionally, Respondent was required to completely and truthfully answer all questions on forms and in interviews. BAM 105, p. 8. The Department clearly and correctly instructed Respondent to provide true and complete information on his application and subsequent Redeterminations. There is no evidence in the record to suggest that Respondent suffered from a physical or mental impairment that would limit his understanding or ability to fulfill his reporting responsibilities. Despite being so warned, Respondent dishonestly stated on the 2016 Redetermination that he had no earned income while working regularly and earning income at Workforce.

Respondent's failure to report the income or employment change to the Department must be considered an intentional omission 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. Additionally, Respondent's affirmative misrepresentations on his 2016 Redetermination must also be considered intentional misrepresentations to maintain his FAP benefits. Respondent was repeatedly informed that he was required to report any changes to his income and given clear instructions on how to do so. While receiving FAP benefits, Respondent had income from [REDACTED] without ever informing the Department of the income. Then, while still employed with [REDACTED] Respondent submitted a dishonest Redetermination to the Department in 2016. It is clear that Respondent knew of the reporting and disclosure requirements and had an intent to deceive the Department regarding his income in order to maximize his FAP benefits. 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, 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.

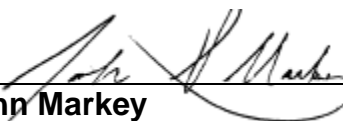
DECISION AND ORDER

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 his FAP benefits.
2. Respondent is subject to a one-year disqualification from receiving FAP benefits.

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

JM/tm



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

DHHS

Kimberly Kornoelje
121 Franklin SE
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49507

Petitioner

OIG
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Respondent

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

cc: IPV-Recoupment Mailbox
L. Bengel