



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: December 4, 2019
MOAHR Docket No.: 19-008465
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 27, 2019 from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and represented herself. During the hearing, an 84-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-84.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) 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?
3. 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 or about December 11, 2015, Respondent was laid off from her job with [REDACTED]

2. On [REDACTED] 2015, Respondent submitted to the Department an application for FAP benefits. Exhibit A, pp. 11-40.
3. Respondent signed the application, certifying the truth of the information in the application and that she received, read, and understood her rights and responsibilities under the programs. Included in the information Respondent acknowledged receiving was a publication titled Things You Must Do. The Things You Must Do publication informed Respondent that she must be truthful in all her statements to the Department and must report changes to the Department, including change in income and employment, within ten days of the change. Exhibit A, pp. 22-23.
4. Respondent's application was approved, and Respondent began receiving monthly FAP benefits, which were calculated on the basis of Respondent having zero income. Exhibit A, pp. 45-58.
5. About halfway through January 2016, Respondent began working again at [REDACTED]. Her first paycheck was issued on January 21, 2016. Respondent regularly worked full-time or near full-time hours from that time through at least some time in May 2016. Exhibit A, pp. 41-44.
6. Shortly after regaining her employment with [REDACTED], Respondent called the Department to report the change in household income. Her worker did not answer, so she left a message. When the worker called her back, Respondent reported that she was back to work. The Department did not process the reported increase in income and continued to issue Respondent's FAP benefits that were calculated on the basis of Respondent having zero income.
7. From December 14, 2015 through May 31, 2016, the Department issued to Respondent \$1,082 in FAP benefits. The Department believes that Respondent was only entitled to \$99 in FAP benefits during that time. Exhibit A, pp. 45-58.
8. In 2017, Respondent was again an ongoing recipient of FAP benefits from the Department.
9. On November 4, 2017, the Department issued to Respondent a Redetermination form to gather relevant information regarding Respondent's ongoing eligibility for FAP benefits. Respondent completed the form and returned it to the Department on November 28, 2017. Respondent indicated on the Redetermination that she was looking for work and had contacted a number of temporary services. Exhibit A, pp. 59-66.
10. Respondent signed the Redetermination, again certifying the truth of the information and her agreement to abide by the rules laid out in the Things You Must Do publication. Exhibit A, p. 65.

11. In January 2018, Respondent began working an assignment for [REDACTED] a temporary agency. She received her first paycheck near the end of January 2018. From that date through at least sometime in August 2018, Respondent regularly worked and received wages from her position with Robert Half. Exhibit A, pp. 67-70.
12. Shortly after beginning her employment with [REDACTED], Respondent called the Department and left a message, which was returned within two days. When Respondent received the call back, she informed the worker that she was back at work. The Department did not process the reported increase in income and continued to issue Respondent's FAP benefits that were calculated on the basis of Respondent having zero income.
13. From March 1, 2018 through August 31, 2018, the Department issued to Respondent \$1,152 in FAP benefits. The Department believes that Respondent was only entitled to \$139 in FAP benefits during that time. Exhibit A, pp. 71-84.
14. On July 24, 2019, the Department's OIG filed a hearing request to establish an IPV with respect to FAP. The Department considers the alleged fraud period to be December 14, 2015 through August 31, 2018. During that time, the Department issued to Respondent \$2,234 in FAP benefits. The Department asserts that Respondent was entitled to only \$238 of FAP benefits during that time. Thus, the Department's hearing request sought to establish an overissuance of FAP benefits of \$1,996. The Department also seeks an order finding that Respondent committed an IPV with respect to FAP and disqualifying Respondent from receiving FAP benefits for a period of one year for a first IPV. Exhibit A, pp. 1-8; 45-58; 71-84.
15. 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.

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 allegedly lying on the December 14, 2015 application and subsequently failing to report when she began employment in 2018, causing the Department to overissue Respondent FAP benefits for the period from December 14, 2015 through August 31, 2018. The Department is seeking to establish an overissuance of FAP benefits in this action as well as a one-year disqualification from receiving FAP benefits.

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 (July 2013), 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)).

Respondent was required to completely and truthfully answer all questions in forms and in interviews. BAM 105 (July 2015), p. 8. The Department claims that Respondent was being dishonest on the [REDACTED] 2015 application when she stated that she had no income and had just recently been laid off. However, upon looking at the payroll history provided, it seems readily apparent that Respondent was laid off during the time period she claimed to be laid off. Thus, the evidence shows that Respondent's assertions on the application were truthful.

However, the Department also contends that Respondent committed an IPV by failing to report her income from both of the jobs discussed above.

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 (October 2016), pp. 11-12. The Department alleges that Respondent breached this duty by failing to report that she began working in 2016 and 2018 and that those breaches amounted to an IPV.

The Department, however, has not met its burden of proof in this matter. Respondent credibly testified that she, in fact, did tell the Department that she was working in both 2016 and 2018 via conversations with her worker. For some reason, Respondent's

reported changes were not properly processed or otherwise looked into by the Department. However, that was through no fault of Respondent's. Thus, Respondent met her reporting requirements. Accordingly, the Department failed to meet its burden of showing by clear and convincing evidence that Respondent committed an IPV with respect to FAP by either making a false statement or intentionally failing to report a change.

OVERISSUANCE

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (July 2013), 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.

A client error occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the Department. BAM 700, p. 7. An agency error is caused by incorrect action by the Department staff or Department processes. BAM 700, p. 5. The amount of the overissuance is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 700, p. 1. If improper budgeting of income caused the overissuance, the Department will use actual income for the past overissuance month for that income source when determining the correct benefit amount. BAM 705 (January 2016), p. 8. For client error overissuances due, at least in part, to failure to report earnings, the Department does not allow the 20 percent earned income deduction on the unreported earnings. BAM 720, p. 8.

In this case, Respondent received more benefits than she was entitled to receive on account of the Department's failure to properly process Respondent's reported earnings in 2016 and 2018. The Department determined Respondent's FAP eligibility without budgeting Respondent's wages from her employment with [REDACTED] and [REDACTED] which caused the household's income to be understated. That, however, is not the end of the inquiry.

For a client error overissuance, including those caused by an IPV, the overissuance period begins the first month benefit issuance exceeds the amount allowed by policy or 72 months before the date it was referred to the recoupment specialist, whichever is later. BAM 715 (October 2017), p. 5. For an agency error overissuance, the overissuance period begins 12 months before the date the overissuance was referred to the recoupment specialist. BAM 705 (October 2018), p. 5.

As the overissuance was caused by the Department's failure to process Respondent's earnings, the overissuance is most appropriately categorized as an agency error overissuance. Under the rules governing agency error overissuances, the overissuance period can only be a maximum of 12 months. In this case, the Department is attempting to establish an overissuance that covers a period much longer than that. As all of the

benefits issued from December 14, 2015 through May 31, 2016 are way outside of any permissible agency error overissuance period, the Department is prohibited from trying to establish an overissuance with respect to those benefits.

In addition, when calculating overissuances caused by agency error, the Department must apply the 20% earned income deduction, which it did not do in calculating Respondent's alleged overissuance. Thus, while the Department has shown that Respondent received more benefits than she was entitled to, the amount of that overissuance is clearly inflated by including a far too long overissuance period and failing to apply the 20% earned income deduction in the calculation.

DISQUALIFICATION

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving FAP 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 IPV related to FAP benefits. Thus, Respondent is not 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 not established by clear and convincing evidence that Respondent committed an IPV with respect to his FAP benefits.
2. The Department has established by clear and convincing evidence that Respondent received an overissuance of FAP benefits that the Department is entitled to recoup and/or collect.
3. Respondent is not subject to a one-year disqualification from receiving FAP benefits.

IT IS ORDERED that the Department shall recalculate the overissuance from March 1, 2018 through August 31, 2018 overissuance as agency error overissuance, which includes applying the 20% earned income discount to Respondent's reported earnings with [REDACTED] and provide Respondent with a Notice of Overissuance.

IT IS FURTHER ORDERED that Respondent shall not be disqualified from receiving FAP benefits as a result of this decision.

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

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

DHHS

Susan Noel
26355 Michigan Ave
Inkster, MI
48141

Respondent

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

cc: IPV-Recoupment Mailbox
L. Bengel