



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: January 21, 2020
MOAHR Docket No.: 19-009105
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. After due notice, a telephone hearing was held on January 6, 2020 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 98-page packet of documents was offered and admitted as into evidence as Exhibit A, pp. 1-98.

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 or about May 6, 2015, Respondent began working for [REDACTED]. She received her first paycheck on May 28, 2015. Respondent worked for and received wages from [REDACTED] consistently from that date until about early-February 2016. Respondent then had a brief break in employment until sometime in mid-June 2016. Respondent received her first paycheck after going back to work on June

30, 2016. Respondent worked for and received wages from [REDACTED] from that date until at least mid-December 2016. Exhibit A, pp. 39-42.

2. On [REDACTED], Respondent submitted to the Department an application for FAP benefits. Exhibit A, pp. 10-38.
3. On the application, Respondent dishonestly indicated that she had no income or employment at the time of application. Exhibit A, pp. 18-19.
4. Respondent signed the application, thereby certifying that all of the information was truthful. Exhibit A, p. 21.
5. On [REDACTED], Respondent submitted another application for FAP benefits. Exhibit A, pp. 43-70.
6. On the application, Respondent indicated that she did not have any employment or income at the time of application despite the fact that she was working full-time for [REDACTED] and received a paycheck both three days before the application and four days after the application. Exhibit A, pp. 41; 49-50.
7. Respondent was approved for FAP benefits based on the information Respondent provided. From July 1, 2015 through December 31, 2016, Respondent received FAP benefits that were calculated without respect to her hidden income from [REDACTED]. Exhibit A, pp. 71-98.
8. On [REDACTED] 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, 2015 through December 31, 2016. The Department has already established that Respondent received a \$5,260 overissuance of FAP benefits received during the fraud period. Exhibit A, pp. 1-8, 71-98.
9. 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.
10. Respondent did not have any apparent mental or physical impairment that would limit her understanding or ability to fulfill her 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 misrepresenting her employment on one FAP application and her employment and income on a subsequent FAP application. The Department contends that the misrepresentation led the Department to overissue to Respondent \$5,260 in FAP benefits for the period from July 1, 2015 through December 31, 2016.

Overissuance

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (October 2015), 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 she was entitled to receive. The Department determined Respondent's eligibility without budgeting Respondent's concealed income from her employment with [REDACTED], which caused Respondent's household income to be understated. Properly factoring into the equation the household's unreported income reduced the amount of FAP benefits that Respondent was eligible to receive. Prior to the hearing, the Department had already established that Respondent received an overissuance of FAP benefits from July 1, 2015 through December 31, 2016 totaling \$5,260.

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 completely and truthfully answer all questions in forms and in interviews. BAM 105 (July 2015), p. 8. On May 6, 2015, Respondent began working in a full-time capacity for Randstad. On May 11, 2015, just five days later, Respondent submitted an application for FAP benefits to the Department. On the employment section of the application, Respondent was asked whether anyone in the household had any income from employment or otherwise. Respondent indicated that nobody in her household had any income. No mention was made of the fact that she had obtained employment just days earlier and was working and earning wages on a regular consistent basis.

Respondent was also required to report changes in her household's circumstances, including to income, to the Department within 10 days of the date of the change. BAM 105, pp. 11-12. Respondent was issued her first paycheck from [REDACTED] on May 28, 2015. Every week thereafter through February 2016, Respondent received a paycheck that was consistently between \$475 and \$725. At no point did Respondent report the earnings despite being aware that she was receiving FAP benefits on the basis of her having no income.

From February 2016 through sometime in June 2016, Respondent was no longer working and earning income with [REDACTED]. However, starting in late-June 2016, Respondent once again began working full-time hours with [REDACTED], receiving her first paycheck on June 30, 2016. She worked full-time hours and was paid on a weekly basis from that point through at least the middle of December 2016. Again, she did not report any changes to income or employment to the Department.

On September 11, 2016, during a time Respondent was working and receiving wages for her full-time job, Respondent filed another FAP application wherein she once again lied about her employment and income status by claiming to have no job or income. Thus, Respondent affirmatively misrepresented her household's income and employment status when filing the FAP application with the Department.

Respondent's dishonest and misleading statements to the Department regarding her household's income must be considered an intentional misrepresentation to maintain her FAP benefits since Respondent knew or should have known that she was required to report the income to the Department and that reporting the income to the Department would have caused the Department to recalculate and reduce her FAP benefits. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her 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, 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.

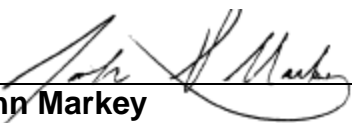
DECISION AND ORDER

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 her 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/tlf



John Markey
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

