



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: March 12, 2020
MOAHR Docket No.: 19-009512
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 three way telephone hearing was held on February 12, 2020, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent appeared for the hearing and represented herself.

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 January 1, 2017 to March 31, 2017 (FAP fraud period), Respondent was issued \$1,533 in FAP benefits by the State of Michigan and the Department alleges that Respondent was entitled to \$319 in such benefits during this time period, resulting in a FAP OI of \$1,214.

2. On [REDACTED] 2016, Respondent filed a Change Report with the Department reporting that her employment with the 36th District Court ended on July 29, 2016 and that she received her final paycheck on August 5, 2016. (Exhibit A, pp. 49-51)
3. On [REDACTED] 2016, Respondent signed and submitted an assistance application to receive benefits from the Department. 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. 10-45)
4. On [REDACTED], 2017, Respondent signed and submitted an application to receive child development and care (CDC) benefits from the Department. On the application, Respondent reported that she returned to her job with the 36th District Court on March 6, 2017. In signing the application, Respondent acknowledged being aware of her responsibilities, as well as the penalties for failing to comply. (Exhibit A, pp.52-88)
5. 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.
6. The Department obtained verification of Respondent's employment and earnings through the Work Number, showing that she was employed and receiving income from January 8, 2016 through September 2, 2016. There was a break in Respondent's employment, however, records show that she returned to work, receiving her first pay on November 23, 2016 and continuing through June 2018 (Exhibit A, pp. 46-48)
7. The Department's OIG filed a hearing request on or around August 26, 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 \$1,214.
8. This was Respondent's first alleged IPV and the Department requested that Respondent be disqualified from receiving FAP benefits for 12 months.
9. The Department has established a client error FAP OI claim in the amount of \$1,214 and is not seeking a decision on recoupment of the FAP OI.
10. 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 \$1214, the Department testified 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 \$1,214 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 returned to her employment and was 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 (October 2016), pp. 9-12; 7 CFR 273.12(a)(1); 7 CFR 273.21.

The Department contended that Respondent's failure to timely report her employment and earned income caused an OI of FAP benefits in the amount of \$1,214 from January through March 2017. The Department presented evidence from the Work Number, showing that after a brief period of no income/employment, Respondent returned to work and began earning income again with the November 23, 2016 pay date. The records established that Respondent continued to have earnings throughout the remainder of the FAP 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], 2016, prior to the alleged fraud period. 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. Additionally, Respondent completed a Change Report on [REDACTED] 2016, reporting that her employment ended. Therefore, she was aware that she would also be required to timely report her return to work. The Department's evidence showed that although Respondent completed a CDC assistance application on [REDACTED], 2017, and reported that she was employed, Respondent failed to identify or disclose the correct start date of her return to work. Upon review, Respondent reported that she returned to work effective March 6, 2017, despite having been receiving income since November 23, 2016.

At the hearing, Respondent testified that in August 2016, she went on maternity leave from her employment and was not earning any income. She indicated that she requested a short-term disability from her employment but does not recall the dates. Respondent asserted that she couldn't recall or remember much of the information but stated that she did not intentionally withhold any information. Respondent did not present any evidence such as pay stubs or letters from her employer refuting the information from the Work Number presented by the Department. There was further no evidence or explanation for Respondent's failure to accurately disclose the date in which she returned to work in November 2016 on the [REDACTED] 2017 assistance application she completed.

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 accurately and timely report to the Department that she returned to her 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 IPV's 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

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