



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.: 19-012106
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 February 6, 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 as a simplified reporting (SR) group. From December 1, 2018 to January 31, 2019 (FAP fraud period), Respondent was issued \$1,524 in FAP benefits by the State of Michigan and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period, resulting in a FAP OI of \$1,524.

2. On or around [REDACTED], 2018, 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 for herself and her household members. (Exhibit A, pp. 10-17)
 - a. At the time of the application, Petitioner's husband [REDACTED] was identified as a household member.
 - b. At the time of the application, the Department verified Mr. [REDACTED] loss of employment using the Work Number. (Exhibit A, pp.24-25)
3. The Department sent Respondent a Notice of Case Action dated August 17, 2018 notifying her that she and her group members were approved for FAP benefits based on her reported earned income of \$0. The Notice of Case Action again advised Respondent of her simplified reporting responsibilities, including the requirement that she report any increases in income that were in excess of the simplified reporting limit for her group size of five. (Exhibit A, pp. 18-22)
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 Mr. [REDACTED] employment and earnings through the Work Number, showing that he returned to work, receiving his first pay on September 28, 2018 and continuing through the FAP fraud period. (Exhibit A, pp. 26-29)
 - a. The records indicate that Respondent's household income exceeded the simplified reporting limit beginning in October 2018 and continuing through the fraud period. (Exhibit A, pp. 26-29)
6. On or around [REDACTED], 2018, Respondent completed a Semi-Annual Contact Report (Semi-Annual) review for her FAP case. On the Semi-Annual, Respondent identified her husband Mr. [REDACTED] as a household member. In the household income section of the Semi-Annual, Respondent checked the box indicating that the household's gross earned income has not changed by more than \$100.00 of the \$0.00 that was budgeted. She further checked the box indicating that no one in the household has had a change in earnings because they changed, started or stopped a job. (Exhibit A, pp. 30-32)
7. At the time of the Semi-Annual, Mr. [REDACTED] had returned to work and was earning income.

8. The Department's OIG filed a hearing request on or around October 23, 2019, alleging that Respondent intentionally failed to report her husband's increased earnings, and as a result received FAP benefits that she was ineligible to receive, causing a FAP OI of \$1,524.
9. This was Respondent's first alleged IPV and the Department requested that Respondent be disqualified from receiving FAP benefits for 12 months.
10. The Department has established a client error FAP OI claim in the amount of \$1,524 and is not seeking a decision on recoupment of the FAP OI.
11. 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 \$1,524, 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 \$1,524 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 of the FAP because she failed to report when her household income exceeded the income limit for her SR group, resulting in an overissuance of FAP benefits. The Department asserted that Respondent's household income exceeded the SR limit in October 2018, and as a result, she was overissued FAP benefits from December 2018 to January 2019, when the Department discovered the earnings.

Employment income is considered in the calculation of a client's FAP eligibility and amount. BEM 556 (July 2013), pp. 1-6. FAP recipients who are simplified reporters are required to report income only when the group's actual gross monthly income (not converted) exceeds the SR income limit for their group size. BAM 200 (January 2017), p. 1. No other change reporting is required. BAM 200, p. 1. If the group has an increase in income, the group must determine its total gross income at the end of that month, and if the total gross income exceeds the group's SR income limit, the group must report this change to the Department by the 10th day of the following month. BAM 200, p. 1. The Department sends the client simplified reporting information which explains the reporting requirements based on their circumstances at the time of issuance. The DHS-1605 Notice of Case Action is sent to provide the specific income limit for the group based on the group size. BAM 200, p. 2. For failure to report income over the limit, the first month of the overissuance is two months after the actual monthly income exceeded the limit. BAM 200, pp. 5-6.

In this case, Respondent was notified, in a Notice of Case Action sent to her on August 17, 2018, that she was required to report when her household's gross income exceeded the SR income limit of \$3,118 based on her group size of five. Based on the evidence presented, Respondent was properly advised of her reporting obligations.

The Department provided copies of the verification of employment obtained from the Work Number which detailed Mr. [REDACTED] employment and income, specifically, the pay dates and amounts earned. Upon review, Mr. [REDACTED] returned to work after a brief period off and received his first pay on September 28, 2018. It further shows that the

household income first exceeded the SR limit in October 2018. The monthly income continued to be in excess of the SR limit through January 2019.

In support of its contention that Respondent committed an IPV, the Department presented evidence establishing that Mr. [REDACTED] was reported to be a member of Respondent's household on the [REDACTED] 2018 application and again on the [REDACTED] 2018 Semi-Annual. Additionally, a review of the Semi-Annual completed during the period in which Mr. [REDACTED] was employed and earning income, indicates that Respondent failed to disclose the earnings.

At the hearing, Respondent asserted that she and Mr. [REDACTED] have been separated since August 2016 and have not lived together since that time. Respondent later testified that she could not recall if they were living together during the fraud period or at the time she completed the [REDACTED] 2018 application and [REDACTED] 2018 Semi-Annual. She further stated that she should have reported to the Department that he was no longer in the household and acknowledged that she failed to do so. Although Respondent presented evidence that she and Mr. [REDACTED] have since divorced (Exhibit 1), there was no plausible explanation provided for Respondent's failure to remove him from the household on the Semi-Annual form she completed or otherwise, her failure to disclose his earnings. Additionally, a review of the Case Comments Summary support the Department's position that Mr. [REDACTED] was a household member during the fraud period.

The Department's evidence showed that despite being advised of her reporting responsibilities with respect to income and employment for herself and her household members, as well as the penalties for failing to do so, Respondent failed to report to the Department that her husband's income exceeded the SR limit. Because Respondent failed to accurately report her husband's employment and income to the Department on the Semi-Annual form she completed, 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 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

Sharnita Grant
25637 Ecorse Rd.
Taylor, MI 48180

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

cc: IPV-Recoupment Mailbox
L. Bengel