



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: February 10, 2020
MOAHR Docket No.: 19-012136
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 February 6, 2020 from Detroit, Michigan. The Department was represented by Patrick Cousineau, Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and the hearing and represented herself. During the hearing, a 122-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-122.

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) and/or the Family Independence Program (FIP)?
2. Should Respondent be disqualified from receiving FAP and/or FIP 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] 2017, Respondent submitted to the Department an application for FAP and FIP benefits. On the application, Respondent indicated that she had a job with [REDACTED] that was expected to continue in the next 30 days. However, later in the application, Petitioner wrote that she was currently on

maternity leave and expected to return to work in the middle of September 2017. Exhibit A, pp. 13-63.

2. 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. 44-46.
3. Respondent's FAP application was approved, and she began receiving monthly FAP and FIP benefits, which were calculated on the basis of Respondent having [REDACTED] earned income. Exhibit A, pp. 64-71.
4. On September 5, 2017, the Department issued to Respondent a Notice of Case Action informing Respondent that her application for FAP benefits was approved. Once again, Respondent was reminded of the responsibility to report changes to the Department within ten days of the change. Exhibit A, pp. 64-67.
5. On September 12, 2017, the Department issued to Respondent a Notice of Case Action informing Respondent that her application for FIP benefits was approved. Once again, Respondent was reminded of the responsibility to report changes to the Department within ten days of the change. Exhibit A, pp. 68-71.
6. During the week ending [REDACTED] 2017, Respondent returned to work for [REDACTED]. She received her first paycheck on [REDACTED], 2017. Respondent maintained regular part-time employment and earnings from that job. Exhibit A, pp. 72-77.
7. Respondent did not recall reporting the earnings from [REDACTED] to the Department beyond the accurate statement on the August application that she would be returning to work for [REDACTED] in the middle of September 2017.
8. On August 20, 2018, Respondent began working for [REDACTED] Exhibit A, pp. 88-89.
9. On August 21, 2018, Respondent followed the reporting instructions by calling her worker at the number provided on the Notice of Case Action and reporting that she had started new employment.
10. On August 26, 2018, Respondent received her first paycheck from [REDACTED]. Exhibit A, pp. 88-89.

11. From November 1, 2017 through January 31, 2018, the Department issued to Respondent \$ [REDACTED] in FAP benefits. Respondent was entitled to receive only [REDACTED] of FAP benefits during that period once her income from her employment with [REDACTED] is factored into the equation. The Department has already established that Respondent received an overissuance of FAP benefits totaling [REDACTED]. Exhibit A, pp. 1-9; 99-120.
12. From December 1, 2017 through December 31, 2017, the Department issued to Respondent [REDACTED] in FIP benefits. Respondent was entitled to receive only [REDACTED] of FIP benefits during that period once her income from her employment is factored into the equation. The Department has already established that Respondent received an overissuance of FIP benefits from December 1, 2017 through December 31, 2017 totaling [REDACTED]. Exhibit A, pp. 1-9; 99-120.
13. From November 1, 2018 through December 31, 2018, the Department issued to Respondent [REDACTED] in FIP benefits. Respondent was entitled to receive only [REDACTED] of FIP benefits during that period once her income from her employment is factored into the equation. The Department has already established that Respondent received an overissuance of FIP benefits from November 1, 2018 through December 31, 2018 totaling [REDACTED]. Exhibit A, pp. 1-9; 99-120.
14. On [REDACTED], 2019, the Department's OIG filed a hearing request to establish an IPV with respect to FAP and FIP. The Department's OIG requested that Respondent be disqualified from receiving FAP and FIP benefits for one year for a first alleged IPV. The Department considers the alleged fraud period with respect to FAP to be November 1, 2017 through January 31, 2018. The Department considers the alleged fraud period with respect to FIP to be December 1, 2017 through December 31, 2017 and November 1, 2018 through December 31, 2018. Exhibit A, pp. 1-9.
15. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services 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.

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 2016), 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 income from employment, which caused Respondent's income to be understated. When factored into the calculation, the unreported income reduced the amount of FAP and FIP benefits that Respondent was eligible to receive. Prior to the hearing in this matter, the Department had already established that Respondent was overissued █████ of FAP benefits during the alleged fraud period from November 1, 2017 through January 31, 2018; █████ of FIP benefits during the alleged fraud period from December 1, 2017 through December 31, 2017; and \$████ of FIP benefits during the alleged fraud period from November 1, 2018 through December 31, 2018.

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 (January 2016), 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, p. 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 report changes in her circumstances to the Department within 10 days of the date of the change. BAM 105 (April 2016), pp. 11-12. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. The Department alleges that Respondent intentionally breached this duty twice by failing to report when she returned to work for █████ in █████ 2017 and again when she allegedly failed to report when she began working for █████ in █████ 2018.

In this case, the Department has not met its burden of proving that Respondent intentionally withheld or misrepresented information for the purpose of obtaining benefits to which she was not entitled. Respondent's actions with respect to both jobs were reasonable and honest. During the hearing, Respondent credibly denied having intentionally misled the Department and demonstrated that she attempted in good faith to adhere to all of the rules and regulations concerning her FAP and FIP benefits.

With respect to [REDACTED], Respondent reported on her [REDACTED] 2017 application that she was employed by [REDACTED], the employment was expected to continue beyond 30 days after the date of application, and she would be returning to work for [REDACTED] in the middle of [REDACTED] 2017. All of that was true, and Respondent did, in fact, return to work for [REDACTED] in the middle of [REDACTED] 2017.

Respondent does not recall whether she reported the return to work after it actually happened, which she was required to do. If she failed to do so, it would amount to a client error and potentially result in an overissuance of benefits, which is the case here. However, not every client error amounts to an IPV. In this case, even assuming an error occurred, it does not even come close. Respondent reported on the application that she had a job that was expected to continue and was going to return to work in just a few short weeks. If Respondent had an intent to defraud the Department regarding her income and employment, presumably she would not have accurately told the Department when she would be working and the terms upon which she would be working. Respondent's actions with respect to her employment with [REDACTED] do not in any way show that Respondent intended to defraud the Department. In fact, they show quite the opposite.

With respect to [REDACTED], Respondent demonstrated that she called her case worker at the number she was directed to contact on August 21, 2018 to report that she had started working on [REDACTED] 2018. Respondent then received her first paycheck from [REDACTED] on August 26, 2018. While the Department did not have record of the August 21, 2018 phone call, Respondent brought with her to the hearing a screenshot of her phone bill showing that the call was made to the appropriate number that day. She also credibly testified that she had a conversation with her worker that day wherein she reported the new job. Mr. [REDACTED] acknowledged that Respondent's records showed that the Department was called on August 21, 2018 at 2:13 pm at the number that appears on Respondent's Notice of Case Action as the number to reach the case worker for reporting changes. It is found that Respondent actually did report the change. The resulting overissuance should have been deemed an agency error overissuance that resulted from the Department's failure to implement Respondent's reported change of income.

Accordingly, the Department failed to meet its burden of showing by clear and convincing evidence that Respondent committed an IPV with respect to FAP and/or FIP by either making a false statement or intentionally failing to report a change.

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 IPV. Thus, Respondent is not subject to a disqualification from receiving FAP and/or FIP 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 failed to establish by clear and convincing evidence that Respondent committed an IPV with respect to her FAP and/or FIP benefits.
2. Respondent is not subject to a disqualification from receiving FAP and/or FIP benefits.

IT IS ORDERED that Respondent shall not be disqualified from receiving FAP benefits.

IT IS FURTHER ORDERED that Respondent shall not be disqualified from receiving FIP benefits.

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

Yaita Turner
51111 Woodward Ave 5th Floor
Pontiac, MI
48342

Respondent

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

cc: IPV-Recoupment Mailbox
L. Bengel