



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 30, 2020
MOAHR Docket No.: 19-013766
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 March 16, 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), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5). During the hearing, a 129-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-129.

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 the Family Independence Program (FIP)?
2. Should Respondent be disqualified from receiving FAP and 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. Respondent was an ongoing recipient of FAP benefits from the Department.
2. On [REDACTED] 2016, Respondent submitted to the Department an application for FIP benefits. Respondent indicated that she had no income and her job had recently ended due to her maternity leave. Exhibit A, pp. 16-48.

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. 30-31.
4. On October 7, 2016, the Department issued to Respondent a Semi-Annual Contact Report form to gather relevant information regarding Respondent's ongoing eligibility for program benefits. Respondent completed the form and returned it to the Department on October 17, 2016. On the form, Respondent indicated that the only change she had to income was the one that she verified already that involved losing her employment. Exhibit A, pp. 56-58.
5. On October 14, 2016, Respondent received her first paycheck for her return to work after maternity leave. Despite having received that paycheck for work performed over the previous two weeks, Respondent certified to the Department that she was not working or receiving income three days later. Respondent continuously worked for that employer through at least the middle of May 2017. Exhibit A, pp. 83-99.
6. Respondent received several other documents over the following months that directed her to report changes and gave her information regarding the consequences if she failed to do so. Those forms also indicated that Respondent's benefits were being calculated on the basis of her having no earned income despite the fact that she was working at the time. Exhibit A, pp. 50-56; 59-62; 63-66; 67-70.
7. From December 1, 2016 through April 30, 2017, the Department issued to Respondent FIP and FAP benefits based on Respondent's fraudulent misrepresentations regarding her household income. Respondent was not entitled to receive most of the benefits she received during that period once her fraudulently concealed income was factored into the equation. The Department has already established that Respondent received an overissuance of FAP benefits totaling \$1,313 and FIP benefits totaling \$1,885. Exhibit A, pp. 100-128.
8. On December 19, 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 to be December 1, 2016 through April 30, 2017. Exhibit A, pp. 1-12.

9. 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 hidden income, 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 \$1,313 of FAP benefits and \$1,885 of FIP benefits during the fraud period.

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)).

In this case, the Department has met its burden. Respondent was required to completely and truthfully answer all questions on forms and in interviews. BAM 105 (October 2016), p. 9; 7 CFR 273.12; 7 CFR 273.21. The Department clearly and correctly instructed Respondent to provide true and complete information on the applications and other documents. There is no evidence in the record to suggest that Respondent suffered from a physical or mental impairment that would limit her understanding or ability to fulfill her reporting responsibilities.

Despite being repeatedly informed of her responsibilities, Respondent continuously misrepresented her income to the Department by intentionally failing to inform the Department of her income from her employment, which was substantial and regular. Respondent's affirmative misrepresentations on the application and subsequent submissions and failure to subsequently report the income must be considered intentional misrepresentations to maintain her FAP and FIP benefits. Respondent was repeatedly informed that she was required to report all income to the Department. Respondent instead submitted dishonest statements to the Department on the documents. It is clear that Respondent knew of the reporting and disclosure requirements and had an intent to deceive the Department regarding her income in order to maximize her FAP and FIP benefits. 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 or FIP benefits. Thus, this is Respondent's first IPV related to FAP and FIP benefits. Therefore, Respondent is subject to a one-year disqualification from receiving FAP and 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 established by clear and convincing evidence that Respondent committed an IPV with respect to her FAP benefits.

2. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to her FIP benefits.
3. Respondent is subject to a one-year disqualification from receiving FAP benefits.
4. Respondent is subject to a one-year disqualification from receiving FIP benefits.

IT IS ORDERED that Respondent shall be disqualified from receiving FAP benefits for a period of one year.

IT IS FURTHER ORDERED that Respondent shall be disqualified from receiving FIP benefits for a period of one year.

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

DHHS

Deborah Lloyd
3709 Deep River Road
Standish, MI
48658

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

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

cc: IPV-Recoupment Mailbox
L. Bengel