



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

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Date Mailed: December 6, 2018
MAHS Docket No.: 18-009613
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████ ██████

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 Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on December 5, 2018, from Lansing, Michigan. The Department was represented by Christopher Fechter, Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e). During the hearing, 93 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-93.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. 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 ████████ 2016, Respondent submitted to the Department an application for FAP benefits. Respondent's FAP group of seven consisted of herself, her husband ████████ and five minor children. On the application, Respondent indicated that both her and her husband had jobs. She reported that she worked at ██████████

██████████ 20 hours per week at \$██████████ per hour. She reported that ██████████ worked at ██████████ 40 hours per week at \$██████████ per hour. Exhibit A, pp. 10-56.

2. Respondent signed the application and thereby certified that the information Respondent provided in the application was true and she understood her responsibility to report any changes per Department policy. Further, Respondent acknowledged that she understood lying to the Department to get benefits or failing to report as required could result in termination of her benefits, disqualification of future benefits, and the initiation of fraud proceedings against her. Exhibit A, pp. 38-39.
3. On April 5, 2016, the Department issued to Respondent a Notice of Case Action informing Respondent that she was approved for FAP benefits in the amount of \$1,022 per month. The Notice informed Respondent that she was a simplified reporter and stated, "Effective the date of this notice, the only change you are required to report for the Food Assistance program is: WHEN YOUR HOUSEHOLD INCOME EXCEEDS THE LIMIT LISTED BELOW." Immediately under that directive was an income limit of \$3,980. Exhibit A, pp. 57-60.
4. Sometime in the third quarter of 2016 (July 1, 2016 through September 30, 2016), ██████████ began working at JC Building Company LLC (JC). During the third quarter of 2016, ██████████ earned \$██████████ from his employment with JC. ██████████ continued working for JC through at least sometime in the fourth quarter of 2017. From the fourth quarter of 2016 through the fourth quarter of 2017, ██████████ never earned less than \$██████████ from his employment with JC. Exhibit A, pp. 67-70.
5. On September 12, 2016, the Department issued to Respondent a Redetermination, Form 1010, in order to gather relevant information regarding Respondent's ongoing eligibility for FAP benefits. Exhibit A, pp. 41-46.
6. On October 12, 2016, Respondent returned the completed Redetermination to the Department and certified that all information contained within the document was accurate. Exhibit A, pp. 61-66.
7. On the returned Redetermination, Respondent was asked whether anyone in his household had income. The question was prefaced with a statement instructing Respondent to provide proof of all income her household received, including any stopped income and pay records from the previous 30 days. Respondent simply answered "No" and wrote that ██████████ no longer worked at ██████████ Exhibit A, pp. 61-66.
8. Respondent did not report ██████████ employment with or income from ██████████ to the Department.
9. From July 1, 2016, through March 31, 2017, the Department issued Respondent \$7,366 of FAP benefits. Exhibit A, pp. 71-93.

10. On September 14, 2018, the Department's OIG filed a hearing request to establish an IPV. Exhibit A, pp. 1-4.
11. The Department's OIG requested that Respondent be disqualified from receiving FAP benefits for one year for a first alleged IPV. Exhibit A, pp. 1-4.
12. The Department considers the alleged fraud period to be from July 1, 2016, through March 31, 2017. Exhibit A, pp. 1-4.
13. During the alleged fraud period, Respondent was issued \$7,366 of FAP benefits, and the Department believes Respondent not entitled to any FAP benefits during that time period. Thus, the Department is seeking to establish an overissuance of FAP benefits of \$7,366. Exhibit A, pp. 1-4, 71-93.
14. 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 failing to report when her household's income exceeded the simplified reporting limit and then misrepresented her household's income on a subsequent redetermination.

Overissuance

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (January 2016), p. 1. 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.

In this case, Respondent received more benefits than she was entitled to receive. The Department determined Respondent's eligibility without budgeting ██████ wages from his employment with JC, which caused Respondent's household income to be understated. Respondent's unreported income reduced the amount of FAP benefits that Respondent was eligible to receive. The Department presented sufficient evidence

to establish that Respondent was overissued \$7,366 of FAP benefits from July 1, 2016, through March 31, 2017.

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.

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 a simplified reporter. Simplified reporting groups are required to report changes only when the group's actual monthly income exceeds the simplified reporting limit for the group. BAM 200 (December 2013), p. 1. In this case, Respondent was informed via the April 5, 2016 Notice of Case Action that the simplified reporting limit for her group was \$3,980. In the third quarter of 2016, the [REDACTED] had at least \$[REDACTED] in income. Exhibit A, p. 70. For that three-month period, [REDACTED] income averaged \$[REDACTED] per month. As the average was higher than the simplified reporting limit, [REDACTED] income must have been higher than the simplified reporting limit for at least one of those months. Yet at no point did Respondent report to the Department that her household income exceeded the limit. That above income figures not even include any income from Respondent's job, if there was any.

Additionally, Respondent was required to completely and truthfully answer all questions in forms and in interviews. BAM 105 (April 2016), p. 9. On October 27, 2016, Respondent submitted a Redetermination to the Department. On the "Income Source" section of the Redetermination, Respondent checked the box for "No" when asked "Does anyone in your household have income?" Directly underneath that dishonest answer, Respondent wrote that [REDACTED] was no longer working at [REDACTED]. No mention was made of the fact that [REDACTED] was working for [REDACTED]. At that time, Respondent was working for [REDACTED] and was receiving consistent income. Thus, Respondent not only failed to timely report going over the simplified reporting limit, she affirmatively misrepresented [REDACTED] income and employment status when filing subsequent documents with the Department.

Respondent's failure to report going over the simplified reporting limit to the Department 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 change to the Department and that reporting the change to the Department would have caused the Department to recalculate and reduce her FAP benefits. Further bolstering this conclusion is the fact that Respondent affirmatively misrepresented her household's employment and income status on the subsequent Redetermination. 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. 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, page 16.

In this case, there is no indication in the record that Respondent was previously found guilty of 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

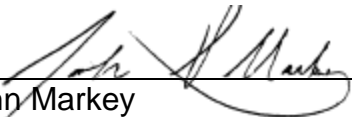
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to her FAP benefits.
2. The Department has established by clear and convincing evidence that Respondent received an overissuance of FAP benefits in the amount of \$7,366 that the Department is entitled to recoup and/or collect.
3. Respondent is subject to a one-year disqualification from receiving FAP benefits.

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

IT IS FURTHER ORDERED that the Department may initiate recoupment and/or collection procedures for the total overissuance amount of \$7,366 established in this matter less any amounts already recouped or collected.

JM/nr



John Markey
Administrative Law Judge
for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Lindsay Miller
125 E. Union St 7th Floor
Flint, MI
48502

Genesee Union St. County DHHS- via
electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
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Respondent

[REDACTED]
[REDACTED]
[REDACTED], MI
[REDACTED]