



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 13, 2018
MAHS Docket No.: 18-009981
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 11, 2018, from Lansing, Michigan. The Department was represented by Thomas Malik, 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, 154 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-154.

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 ██████████ ██████████ Respondent submitted to the Department an application for FAP benefits. Exhibit A, pp. 12-44.
2. On the application, Respondent indicated that her household included three people, herself included. Exhibit A, pp. 12-44.

3. Respondent signed the application, thereby certifying that all the information was correct and that she understood her responsibility to report any changes to the Department within 10 days of the change. Exhibit A, pp. 12-44.
4. On February 22, 2017, Respondent returned to the Department a completed Redetermination. At the end of the document, Respondent informed the Department that she had recently married [REDACTED] [REDACTED] and that her household now included five people. Exhibit A, pp. 45-50.
5. Respondent signed the Redetermination, thereby certifying that all the information was correct and that she understood her responsibility to report any changes to the Department within 10 days of the change. Exhibit A, pp. 45-50.
6. On March 21, 2017, [REDACTED] [REDACTED] was booked into the Monroe County Jail. Exhibit A, p. 141.
7. On [REDACTED] [REDACTED] [REDACTED] Respondent submitted to the Department another application for assistance. On the [REDACTED] [REDACTED] [REDACTED] application, Respondent indicated that her household consisted of five people, including her husband [REDACTED] who was at the time incarcerated. Respondent signed the application, thereby certifying that all information contained in the application was true. Exhibit A, pp. 51-94.
8. On August 1, 2017, the Department issued to Respondent a Semi-Annual Contact Report to gather relevant information related to Respondent's ongoing eligibility for FAP benefits. On August 9, 2017, Respondent returned the completed Semi-Annual Contact Report. On the completed form, Respondent once again represented to the Department that her household consisted of five people, including [REDACTED] [REDACTED] who remained incarcerated. Respondent signed the Semi-Annual Contact Report, thereby certifying that all information contained therein was truthful. Exhibit A, pp. 95-96.
9. On August 23, 2017, [REDACTED] was released from the Monroe County Jail. Exhibit A, p. 141.
10. On November 17, 2017, [REDACTED] was booked into the Monroe County Jail again. He was there until at least March 6, 2018. Exhibit A, p. 141.
11. Based on the information provided by Respondent, the Department issued to Respondent FAP benefits from May 2017 through February 2018 based on a group size of five, including [REDACTED] [REDACTED] Exhibit A, pp. 142-154.
12. The Department's OIG filed a hearing request on September 26, 2018, to establish an OI of FAP benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, pp. 1-5.

13. This is Respondent's first alleged IPV, and the OIG has requested that Respondent be disqualified from receiving FAP benefits for a period of one year. Exhibit A, pp. 1-5.
14. The OIG considers the fraud period to be May 1, 2017, through February 28, 2018. Exhibit A, pp. 1-5.
15. During the alleged fraud period, Respondent was issued \$3,681 in FAP benefits. Exhibit A, pp. 5, 142-154.
16. During the fraud period, the Department's position is that Respondent was entitled to \$3,059 in FAP benefits. Exhibit A, pp. 5, 142-154.
17. The Department alleges that Respondent received an OI of FAP benefits in the amount of \$622. Exhibit A, pp. 1-5, 142-154.
18. Respondent did not have any apparent mental physical impairment that would limit her understanding or ability to fulfill her reporting requirement.
19. 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. 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. FAP benefits are calculated by first determining how many people are in the FAP group. BEM 212 (January 2017), p. 1. All else being equal, the more members in a group, the more monthly FAP benefits that group will receive. RFT 260 (October 2016).

For the entire months of May, June, and July 2017, [REDACTED] [REDACTED] was not living with Respondent as he was incarcerated. Thus, Mr. [REDACTED] should not have been included in Respondent's FAP group. Likewise, Mr. [REDACTED] was incarcerated during the entire months of January and February 2018 and should not have been included in Respondent's FAP group.

Despite the fact that Mr. [REDACTED] was not a member of Respondent's household for those five months, the Department issued Respondent benefits as though he was a member of the group. After eliminating Mr. [REDACTED] from Respondent's FAP group for those months, it is clear that Respondent was given an overissuance of FAP benefits. To calculate the overissuance, the Department determined what Respondent should have received each of those months and subtracted that from what she actually received. During the hearing, the Department presented sufficient evidence to establish that Respondent was overissued \$622 of FAP benefits during the alleged 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.

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 in forms and in interviews. BAM 105 (October 2016), p. 8. Petitioner was made aware that she was required to report changes in household makeup within 10 days after the change occurred. She was repeatedly reminded of that requirement and the consequences for failing to follow that rule.

Respondent's failure to accurately report Mr. [REDACTED] moves out of the home 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 any changes yet failed to do so. Likewise, on applications Respondent submitting while Mr. [REDACTED] was incarcerated, Respondent dishonestly stated that he was living in her household. Had she been honest, it would have caused the Department to recalculate

and reduce her FAP benefits. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her requirements to the Department. 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, p. 16.

In this case, there is no evidence to suggest that Respondent has previously been found to have committed 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

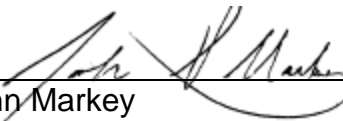
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of FAP benefits in the amount of \$622 that the Department is entitled to recoup and/or collect.
2. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to her FAP benefits.
3. Respondent is subject to a one-year disqualification from receiving FAP benefits.

IT IS ORDERED that the Department may initiate recoupment and/or collection procedures for the amount of \$622 established in this matter, less any amounts already recouped and/or collected.

IT IS FURTHER ORDERED that Respondent is disqualified from receiving FAP benefits for a period of 12 months.

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

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Monroe County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

DHHS

Pam Farnsworth
903 Telegraph
Monroe, MI
48161

Respondent

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