



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: February 24, 2020
MOAHR Docket No.: 19-013021
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

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 Regulations (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on February 13, 2020, from Lansing, Michigan. The Department was represented by Debra Echinaw, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED], appeared and represented herself.

One exhibit was admitted into evidence during the hearing. A 90-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from the Food Assistance Program (FAP)?

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 applied for assistance from the Department, including FAP benefits. In the application, the Department instructed Respondent to report all changes which could affect her eligibility for assistance to the Department within 10 days of the date of the change, including changes in household income.

2. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her responsibilities to the Department.
3. On May 18, 2017, the Department mailed a notice of case action to Respondent to notify her that she was approved for FAP benefits effective May 17, 2017, based on a household size of four and a household income of [REDACTED]. The Department again instructed Respondent to report all changes which could affect her eligibility for assistance to the Department within 10 days of the date of the change, including changes in household income.
4. On June 20, 2017, Respondent began receiving child support disbursements. Respondent received child support disbursements every month thereafter, through at least February 2018.
5. The Department did not receive any report that Respondent had a change in household income from child support.
6. The Department continued to issue FAP benefits to Respondent as if her household did not have any income.
7. On September 6, 2017, Respondent began employment with [REDACTED].
8. On September 15, 2017, [REDACTED] issued Respondent her first paycheck. Respondent received paychecks from [REDACTED] every month thereafter, through February 2018.
9. The Department did not receive any report that Respondent had a change in employment or household income from employment.
10. The Department continued to issue FAP benefits to Respondent as if her household did not have any income.
11. On December 30, 2017, the Department mailed a notice of case action to Respondent to notify her that she was approved for FAP benefits effective January 1, 2018, based on a household size of four and a household income of [REDACTED]. The Department again instructed Respondent to report all changes which could affect her eligibility for assistance to the Department within 10 days of the date of the change, including changes in household income.
12. The Department did not receive any report that the budgeted income shown on the December 30, 2017, notice of case action was incorrect.
13. The Department continued to issue FAP benefits to Respondent as if her household did not have any income.

14. The Department investigated Respondent's case and determined that Respondent was overissued \$2,566.00 in FAP benefits because she was issued FAP benefits based on a budget that did not include all of her household income.
15. The Department gave Respondent notice that she was overissued \$2,566.00 in FAP benefits. The debt has been established, and the Department has begun recouping the balance due.
16. On October 29, 2019, the Department's OIG filed a hearing request to establish that Respondent committed an IPV when she failed to report her household income to the Department.
17. The OIG requested Respondent be disqualified from FAP for 12 months for a first IPV.
18. A notice of hearing was mailed to Respondent at her last known address and it was not returned by the United States Postal Service as undeliverable.

CONCLUSIONS OF LAW

The Supplemental Nutrition Assistance Program (SNAP) is a federal food assistance program designed to promote general welfare and to safeguard well-being by increasing food purchasing power. 7 USC 2011 and 7 CFR 271.1. The Department administers its Food Assistance Program (FAP) pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015. Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Intentional Program Violation

An intentional program violation (IPV) "shall consist of having intentionally: (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards." 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. 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, I find that the Department has met its burden. Respondent was required to report changes in her circumstances to the Department within 10 days of the change. 7 CFR 273.12(a)(2). The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days, including changes in household

income. Respondent failed to report when she began receiving child support and when she began receiving income from employment. Respondent did not provide any legitimate explanation for her inaction. Respondent's failure to report this change to the Department must be considered an intentional misrepresentation to maintain or obtain benefits from the Department since Respondent knew or should have known that she was required to report these changes to the Department and that reporting them would have caused her benefits to be reduced. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her reporting requirement.

Respondent asserted that she did not fail to report her income to the Department. Respondent asserted that she reported to the Department when she began to receive child support and when she began to receive income from employment. I do not find Respondent's assertions credible. First, Respondent did not present any evidence to corroborate her assertions when she knew that her assertions were in doubt. Second, Respondent's FAP benefits continued to be based on a [REDACTED] household income even after the date Respondent alleges that she reported her income to the Department, and Respondent did not report to the Department that her change in income was not properly processed by the Department. Third, the Department issued a notice of case action on December 30, 2017, which specifically advised Respondent that her FAP benefits were based on a [REDACTED] income, and Respondent did not contact the Department to report that her income was not properly budgeted. These circumstances show that Respondent never reported her income.

Disqualification

In general, individuals found to have committed an intentional program violation through an administrative disqualification hearing shall be ineligible to participate in FAP: (i) for a period of 12 months for the first violation, (ii) for a period of 24 months for the second violation, and (iii) permanently for a third violation. 7 CFR 273.16(b). Only the individual who committed the violation shall be disqualified – not the entire household. 7 CFR 273.16(b)(11).

In this case, there is no evidence that Respondent has ever 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 12-month disqualification from FAP.

DECISION AND ORDER

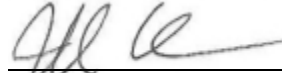
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.

2. Respondent should be disqualified from FAP for 12 months.

IT IS SO ORDERED.

JK/ml



Jeffrey Kemm
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

Barry County DHHS – Via Electronic Mail

Recoupment – Via Electronic Mail

L. Bengel – Via Electronic Mail

Petitioner

OIG – Via Electronic Mail

P.O. Box 30062

Lansing, MI 48909-7562

Respondent

[REDACTED] – Via First Class Mail

[REDACTED]
MI [REDACTED]