



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: October 4, 2023
MOAHR Docket No.: 23-002886
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 Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on October 3, 2023. The Department was represented by Allyson Carneal, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] did not appear. The hearing was held in Respondent's absence.

One exhibit was admitted into evidence during the hearing. A 64-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUES

1. Did Respondent receive an overissuance of State Emergency Relief (SER) that the Department is entitled to recoup and/or collect as a recipient claim?
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 Food Assistance Program (FAP) benefits for 12 months?

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] 2021, Respondent applied for FAP benefits from the Department. Respondent listed the members of her household as Respondent, [REDACTED] [REDACTED] [REDACTED] and [REDACTED]. Respondent asserted that she was the only one who was employed. During the application process, the Department provided Respondent with an information booklet that informed Respondent of her responsibility to report changes to the Department within 10 days of the date of the change, including changes in household income.
2. On December 13, 2021, the Department interviewed Respondent, and the Department went over Respondent's reporting responsibility again.
3. On December 13, 2021, the Department issued a notice of case action that notified Respondent she was approved for FAP benefits. The notice contained instructions to report changes within 10 days of the date of the change, including changes in household income.
4. Respondent did not have any impairment that would have limited her understanding of her reporting responsibilities or her ability to carry out her reporting responsibilities.
5. On May 2, 2022, [REDACTED] began employment at [REDACTED].
6. Respondent did not report [REDACTED] employment to the Department.
7. The Department was unaware of Respondent's change in household income, so the Department continued to issue FAP benefits to Respondent without considering [REDACTED] income from employment.
8. On May 31, 2022, Respondent completed a redetermination form to renew her eligibility for FAP benefits. Respondent listed the members of her household as Respondent, [REDACTED] [REDACTED] [REDACTED] and [REDACTED]. Respondent asserted that she was the only one who was employed. Respondent did not list [REDACTED] employment, even though he was still employed by [REDACTED] at the time.
9. The Department approved Respondent for FAP benefits based on the information she provided to the Department.

10. In July 2022, Respondent's gross household income was 4,575.63, which was composed of Respondent's earnings of [REDACTED] plus [REDACTED] earnings of [REDACTED]
11. On August 2, 2022, Respondent applied for SER from the Department. Respondent listed the members of her household as Respondent, [REDACTED] [REDACTED] and [REDACTED]. Respondent asserted that she was the only one who was employed. Respondent did not list [REDACTED] [REDACTED] employment, even though he was still employed by [REDACTED] at the time.
12. On August 15, 2022, Respondent applied for SER from the Department. Respondent listed the members of her household as Respondent, [REDACTED] [REDACTED] and [REDACTED]. Respondent asserted that she was the only one who was employed. Respondent did not list [REDACTED] [REDACTED] employment, even though he was still employed by [REDACTED] at the time.
13. The Department approved Respondent for \$217.35 in SER for non-heat electricity based on the information she provided to the Department, and the Department approved Respondent for \$69.16 in SER for heat based on the information she provided to the Department.
14. The Department subsequently discovered that a member of Respondent's household, [REDACTED] was receiving income that was not reported to the Department, so the Department initiated an investigation of Respondent's case.
15. During the Department's investigation, the Department determined that it overissued FAP and SER benefits to Respondent because she had unreported household income.
16. The Department determined that Respondent was overissued \$992.00 in FAP benefits for the month of July 2022 because Respondent received \$992.00 in FAP benefits when she was not eligible for any.
17. The Department determined that Respondent was overissued \$286.51 in SER because Respondent received \$286.51 in SER when she was not eligible for any.
18. The Department established a claim for the amount of the FAP overissuance, and the Department began recoupment of the debt.
19. On May 25, 2023, the Department's OIG filed a hearing request to establish that Respondent committed an IPV.

20. The Department's OIG requested Respondent be disqualified from FAP for 12 months for a first IPV, and it requested to have an overissuance of SER of \$286.51 established.
21. 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.

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

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).

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 1, 2018), p. 1. The amount of the overissuance is the amount of benefits issued to the client in excess of what the client was eligible to receive. *Id.* at p. 2.

In this case, Respondent did not receive more SER than she was entitled to receive. Respondent applied for SER, and Respondent received a total of \$286.51 for non-heat electricity and heat. In the month prior to Respondent's application for SER, Respondent's gross household income was [REDACTED]. However, 25% of this amount is not countable. ERM 206 (November 1, 2019), p. 5. Thus, Respondent's total countable household income was [REDACTED].

Respondent's total countable household income was less than the income limit for a household of five to receive SER for energy services. The income limit for a household of five was \$3,880.00. ERM 208 (October 1, 2021), p. 6. Thus, Respondent's total countable household income of [REDACTED] was less than the limit. Since Respondent's total countable household income was less than the income limit, Respondent was eligible for the SER she received. Therefore, Respondent was not overissued SER.

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, the Department alleged that Respondent committed an intentional program violation when she purposely failed to report [REDACTED] earned income to the Department so that she could obtain or maintain her FAP benefits. I find that the Department has met its burden. The Department presented clear and convincing evidence to establish that Respondent had household income that she purposely failed to report to the Department so that she could obtain or maintain FAP benefits.

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 [REDACTED] earned income, and Respondent did not provide any explanation for her inaction. Respondent’s failure to report [REDACTED] earned income to the Department was an intentional misrepresentation to maintain or obtain benefits from the Department.

Disqualification

In general, individuals found to have committed an intentional program violation through an administrative disqualification hearing shall be ineligible to participate in FAP and FIP: (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. BAM 720 at 16 and 7 CFR 273.16(b). Only the individual who committed the violation shall be disqualified – not the entire household. BAM 720 at p. 16 and 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. Respondent did not receive an overissuance of State Emergency Relief that the Department is entitled to recoup and/or collect.
2. The Department established, by clear and convincing evidence, that Respondent committed an Intentional Program Violation.
3. Respondent is personally disqualified from the Food Assistance Program for 12 months.

IT IS SO ORDERED.

JK/ml



Jeffrey Kemm
Administrative Law Judge

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

Via Electronic Mail:

Petitioner

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Lansing, MI 48909-7562
MDHHS-OIG-HEARINGS@michigan.gov

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Interested Parties

Policy Recoupment
N Stebbins
MOAHR

Via First Class Mail:

Respondent

[REDACTED]
MI [REDACTED]