



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: October 24, 2018
MAHS Docket No.: 18-007656
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████ ██████

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 18, 2018, from Lansing, Michigan. The Department was represented by Derrick Gentry, 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)(4).

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 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 ██████, 2013, Respondent applied for assistance from the Department, including FAP. Respondent asserted on her application that she lived in Michigan. Exhibit A, p. 12-33.
2. On April 3, 2013, the Department issued a Change Report to Petitioner. The Department advised Respondent to use the form to report changes to the

Department. Respondent completed the form to add a household member. Exhibit A, p. 34-35.

3. On June 3, 2013, Respondent began using her FAP benefits to complete EBT transactions exclusively in Texas. Respondent completed all EBT transactions through March 18, 2014, in Texas. Respondent then completed EBT transactions in both Michigan and Texas through December 2014. Exhibit A, p. 39-48.
4. The Department investigated Respondent's case when it noticed that her EBT transactions were primarily being completed out of state.
5. The Department interviewed Respondent, and Respondent advised the Department that she was travelling back and forth between Michigan and Texas because her mother was sick.
6. On July 13, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV. Exhibit A, p. 1.
7. The OIG requested Respondent be disqualified from FAP for 12 months for a first IPV. The OIG requested recoupment of \$4,560.00 in FAP benefits issued to Respondent from August 2013 through April 2014.
8. 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).

Overissuance

A recipient claim is an amount owed because of benefits that were overpaid or benefits that were trafficked. 7 CFR 273.18(a)(1). When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (January 1, 2018), p. 1.

Only a resident of Michigan is eligible for assistance from the Department. BEM 220 (April 1, 2018), p. 1. For FAP, an individual is a resident if she lives in Michigan for any

purpose other than a vacation, regardless of whether she has an intent to remain permanently. BEM 220, p. 1.

Here, the Department did not present sufficient evidence to establish that Respondent was not living in Michigan. The Department's only evidence was that Respondent was completing out of state EBT transactions while she was receiving FAP issuances from the Department. When the Department interviewed Respondent, she explained that she was travelling between Michigan and Texas because her mother was sick. The Department did not present any evidence to establish that Respondent established a residence anywhere other than Michigan. The Department did not present a copy of a lease, an out of state driver's license, proof of out of state employment, or anything similar. For these reasons, I must find that the Department's evidence was insufficient to establish that Respondent was not living in Michigan. Therefore, an overissuance cannot be established since the Department alleged Respondent was overissued FAP benefits because she was not living in Michigan when the Department issued them to her and since the Department did not establish that Respondent was not living in Michigan.

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 not met its burden. The Department alleged that Respondent misrepresented or withheld information from the Department when she failed to report that she moved to Texas or when she misrepresented her residence to the Department. As explained in the overissuance section, the Department did not establish that Respondent was not living in Michigan.

Further, the Department did not present sufficient evidence to establish that it instructed Respondent to report a move or change in her residence to the Department. Thus, the Department did not establish that Respondent knew she was supposed to report her move or change in residence to the Department. Therefore, even if Respondent failed to report a move or change in residence, it could not be considered an intentional program violation because there was no evidence that Respondent knew she was supposed to report such a change to 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: (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)(1). An individual found to have committed an intentional program violation with respect to his identity or place of residence in order to receive benefits from more than one state concurrently shall be ineligible to participate in FAP for 10 years. 7 CFR 273.16(b)(5). Only the individual who committed the violation shall be disqualified – not the entire household. 7 CFR 273.16(b)(11).

In this case, the Department did not establish that Respondent committed an intentional program violation, so Respondent is not disqualified 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 FAP benefits.
2. The Department has not established, by clear and convincing evidence, that Respondent committed an IPV.
3. Respondent should not be disqualified from FAP.

IT IS ORDERED that Respondent does not owe the Department a debt for an alleged overissuance.

IT IS FURTHER ORDERED that Respondent shall not be disqualified from FAP.

JK/nr



Jeffrey Kemm
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

Wayne 57 County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

DHHS

Richard Latimore
4733 Conner
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48215

Respondent

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[REDACTED], MI
[REDACTED]