



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: January 8, 2019
MAHS Docket No.: 18-009214
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 January 2, 2019, from Lansing, Michigan. The Department was represented by Cynthia Smith, 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 ██████████ 2016, Respondent applied for assistance from the Department, including FAP benefits.
2. On ██████████ 2017, Respondent's spouse began employment at ██████████. Respondent did not report to the Department that her spouse began employment at ██████████.

3. On [REDACTED], 2017, Respondent began employment at [REDACTED]. Respondent did not report to the Department that she began employment at [REDACTED].
4. On [REDACTED], 2017, the Department issued a Notice of Case Action to Respondent. The Notice notified Respondent that she was eligible for a FAP benefit of \$679.00 per month for a group size of six based on \$[REDACTED] earned income and \$[REDACTED] unearned income per month. 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 employment and income.
5. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her responsibilities to the Department.
6. Respondent did not report her employment or her spouse's employment to the Department after she received the [REDACTED], 2017, Notice of Case Action with instructions to report changes.
7. The Department issued FAP benefits to Respondent without budgeting the income from her employment or the income from her spouse's employment.
8. The Department investigated Respondent's case and discovered that it overissued FAP benefits to Respondent because she had unreported income.
9. The Department attempted to contact Respondent to obtain her explanation for her failure to report her change in income, but the Department was unable to obtain an explanation from Respondent.
10. On August 17, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
11. The OIG requested Respondent be disqualified from FAP for 12 months for a first IPV. The OIG requested recoupment of \$1,856.00 in FAP benefits issued from June 2017 through December 2017.
12. 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.

In this case, Respondent received more benefits than she was entitled to receive because she had unreported income. FAP benefits are income-based, so the amount of income a household has determines the household's FAP benefit. Here, the Department overissued FAP benefits to Respondent because the Department issued FAP benefits to Respondent without budgeting unreported income from employment.

The Department alleged that Respondent was overissued benefits from June 2017 through December 2017, but the Department did not present sufficient evidence to establish that Respondent was aware of her reporting responsibility before she and her spouse obtained employment. The only evidence the Department presented to establish that Respondent was instructed to report changes was the [REDACTED], 2017, Notice of Case Action. Since there is no evidence that Respondent was instructed prior to this, I must find that her reporting obligation did not begin until [REDACTED], 2017, when she was issued the Notice of Case Action with reporting instructions.

Respondent had 10 days from the date her reporting obligation began to report her change in employment and income to the Department, the Department then had 10 days to act on the change, and then any negative action would have required a waiting period of at least 12 days. Thus, the first month that a reported change could have affected her FAP benefits would have been August 2017. BAM 105 (January 1, 2018) and BAM 220 (October 1, 2018). Therefore, Respondent was only overissued FAP benefits beginning August 2017. Respondent was only overissued \$1,161.00 from August 2017 through December 2017.

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 her employment and income. Respondent failed to report required changes after having been properly instructed.

On [REDACTED], 2017, the Department issued a Notice of Case Action to Respondent which showed that her FAP benefit was based on a \$[REDACTED] earned income. The Notice also instructed Respondent to report changes in employment and income. Since Respondent and her spouse were working at the time, Respondent knew or should have known that she needed to report her employment to the Department. Respondent did not do so. Respondent did not provide any explanation for her inaction. Respondent’s failure to report these changes 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 the change to the Department and that reporting the change to the Department 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.

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

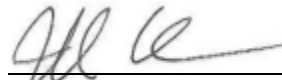
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of FAP benefits in the amount of \$1,161.00 that the Department is entitled to recoup.
2. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.
3. Respondent should be disqualified from FAP.

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$1,161.00 in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall be disqualified from FAP for a period of 12 months.

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

DHHS

Jeannene Gatties
57150 Cty. Rd. 681
Hartford, MI
49051

Van Buren County DHHS- via electronic
mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

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