



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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

Date Mailed: January 15, 2019  
MAHS Docket No.: 18-009741  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED] [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 January 10, 2019, from Lansing, Michigan. The Department was represented by Patrick Cousineau, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] [REDACTED] 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 September 11, 2008, Respondent pled guilty to a controlled substance felony in the Sixth Judicial Circuit Court.
2. On July 18, 2017, Respondent pled guilty to a controlled substance felony in the Sixth Judicial Circuit Court.

3. On [REDACTED] [REDACTED] 2017, the Department issued a Redetermination to Respondent to obtain information to review her eligibility for FAP benefits.
4. Respondent completed the Redetermination and neglected to answer when asked if anyone in her household had been “convicted of a drug-related felony occurring after August 22, 1996?” Respondent answered “No” when asked if she had been convicted of such an offense more than once. Respondent signed the Redetermination and thereby affirmed that she understood each question and that she provided true and complete information.
5. Respondent did not have any apparent physical or mental impairment which would have limited her understanding or her ability to answer the questions on the application truthfully and completely.
6. The Department approved Respondent for FAP benefits based on the information she provided to the Department.
7. The Department conducted an investigation of Respondent’s case and determined that Respondent had two or more felony drug convictions which she had not reported. The Department determined that it overissued Respondent \$770.00 in FAP benefits from August 21, 2017, through December 31, 2017.
8. On September 25, 2018, the Department’s OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
9. The OIG requested recoupment of a \$770.00 overissuance of FAP benefits issued from August 21, 2017, through December 31, 2017, and the OIG requested that Respondent be disqualified from FAP for 12 months for a first IPV.
10. 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, the Department did not present sufficient evidence to establish that Respondent received more FAP benefits than she was entitled to receive. The Department alleged that Respondent received more FAP benefits than she was entitled to receive because she had two unreported felony drug convictions for offenses occurring after August 22, 1996. An individual who has been convicted of two or more felony drug offenses which occurred after August 22, 1996, is ineligible for FAP benefits. 21 USC 862a and 2017 PA 107, Article X, Part 2, Section 619. Pursuant to the applicable law, it is the offense date that is relevant. The Department did not present any evidence to establish the actual date(s) of the felony drug offenses which Respondent was convicted of. Thus, there is no evidence that the felony drug offenses which Respondent was convicted of actually occurred after August 22, 1996. Therefore, there is insufficient evidence to establish that Respondent was ineligible for FAP benefits because she had been convicted of two or more felony drug offenses which occurred after August 22, 1996.

### **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 withheld information on her Redetermination to obtain FAP benefits when she failed to disclose her felony drug convictions. The Redetermination only asked Respondent to disclose felony drug convictions for offenses occurring after August 22, 1996, and the Department did not present any evidence to establish that the felony drug offenses which Respondent was convicted of occurred after August 22, 1996. Thus, there is no evidence that Respondent’s Redetermination was inaccurate.

**Disqualification**

In general, individuals found to have committed an intentional Program violation through an administrative disqualification hearing shall be ineligible to participate in the Program: (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, the Department did not establish that Respondent committed an intentional program violation, so Respondent is not disqualified from FAP for an IPV.

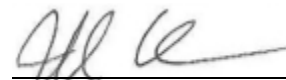
**DECISION AND ORDER**

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 for an IPV.

IT IS SO ORDERED.

JK/nr



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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 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

Oakland 4 County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

**DHHS**

Renee Swiercz  
51111 Woodward Ave 5th Floor  
Pontiac, MI  
48342

**Respondent**

[REDACTED]  
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[REDACTED], MI  
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