



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: February 4, 2019  
MAHS Docket No.: 18-009742  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED] [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Aaron McClintic

**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 Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on January 10, 2019, from Lansing, Michigan. The Department was represented by Maria Williams, Regulation Agent of the Office of Inspector General (OIG). Department Exhibit 1, pp. 1-215 was received and admitted.

Respondent did not appear at the hearing; and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

**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 receiving 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. The Department's OIG filed a hearing request on September 25, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to changes in household income.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time periods it is considering the fraud period are March 1, 2013 through March 31, 2014 and December 1, 2015, through September 30, 2016 (fraud period).
7. During the fraud period, Respondent was issued \$7,333 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$2,482 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$4,851.
9. This was Respondent's first alleged IPV.
10. Respondent was employed at [REDACTED] from January 8, 2013, through March 8, 2014. (Ex. 1, pp. 98-99)
11. Respondent was employed at [REDACTED] [REDACTED] from March 12, 2016, through June 3, 2016. (Ex.1, p. 109)
12. Respondent was employed with [REDACTED] [REDACTED] [REDACTED] from June 30, 2016, through January 2, 2017.
13. Respondent's adult daughter and household member [REDACTED] [REDACTED] was employed by [REDACTED] [REDACTED] from July 27, 2015 through September 7, 2016. (Ex.1, pp. 103-106)
14. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services as undeliverable.

## **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

### **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 changes in employment income for herself and another household member within 10 days of the date. Respondent did not provide any 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 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.

### **Overissuance**

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (January 1, 2018), p.1. When a client group receives

more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1.

The Department established that Respondent was overissued FAP. The Department presented sufficient evidence to establish that Respondent had employment income that she did not report. Respondent did not provide any evidence to the contrary since Respondent did not appear. Thus, I must find that Respondent and a household member had employment income that was not budgeted. The Department presented sufficient evidence to establish that it issued Respondent \$4,851.00 in FAP benefits from March 2013 through July 2016 which Respondent was not entitled to receive.

### **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, 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**

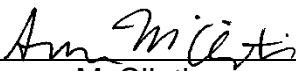
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of program benefits in the amount of \$4,851 from the following program(s) FAP.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$4,851 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.

AM/nr

  
\_\_\_\_\_  
Aaron McClintic  
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**

LaClair Winbush  
17455 Grand River  
Detroit, MI  
48227

Wayne 31 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]