



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 18, 2019
MAHS Docket No.: 18-010130
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 17, 2019, from Lansing, Michigan. The Department was represented by Kelli Owens, 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 [REDACTED] [REDACTED] 2008, Respondent pled guilty to a controlled substance felony in the Third Judicial Circuit Court.
2. On [REDACTED] [REDACTED] 2016, Respondent pled guilty to a controlled substance felony in the Third Judicial Circuit Court.

3. On [REDACTED] 2017, Respondent pled guilty to a controlled substance felony in the Third Judicial Circuit Court.
4. On [REDACTED] 2017, Respondent applied for assistance from the Department, including FAP benefits. In the application, Respondent answered "No" when asked if he had been convicted of a drug felony and answered "No" when asked if he had been convicted of a drug felony more than once. Respondent signed his application and thereby affirmed that he understood the questions and that he provided true and complete information.
5. Respondent did not have any apparent physical or mental impairment which would have limited his understanding or his ability to answer the questions on his application truthfully and completely.
6. The Department approved Respondent for FAP benefits based on the information he 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 for offenses occurring after August 22, 1996, which he had not reported. The Department determined that it overissued Respondent \$769.00 in FAP benefits from May 2017 through August 2017.
8. On September 28, 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 \$769.00 overissuance of FAP benefits issued from [REDACTED] 2017 through [REDACTED] 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 his 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 he was entitled to receive. The Department alleged that Respondent received more FAP benefits than he was entitled to receive because he 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 reliable 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 he had been convicted of two or more felony drug offenses which occurred after August 22, 1996.

The Department asserted at the hearing that the offense date was the date shown next to each charge on each of the registers of actions for the Third Judicial Circuit Court, but I do not find these documents to be reliable evidence of the offense dates. The documents do not state "offense date" or state anything else that would lead one to conclude that the date is in fact an offense date.

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 his application to obtain FAP benefits when he failed to disclose his felony drug convictions. The Department did not present any

evidence to establish that Respondent withheld information about felony drug offenses which could have affected his FAP benefits. The Department did not establish that Respondent had been convicted of two or more felony drug offenses which occurred after August 22, 1996, and only those felony drug convictions would have affected his eligibility for FAP benefits.

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



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

DHHS

Jeanette Cowens
2524 Clark Street
Detroit, MI
48209

Wayne 41 County DHHS- via electronic
mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
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Lansing, MI
48909-7562

Respondent

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