



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: March 13, 2019
MAHS Docket No.: 18-010337
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 March 7, 2019, from Lansing, Michigan. The Department was represented by Daniel Beck, Regulation Agent of the Office of Inspector General (OIG). Respondent, [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], 2017, the Department issued a Redetermination to Respondent to obtain information to review his eligibility for Medical Assistance (MA).
2. On [REDACTED], 2017, Respondent became an absconder of parole from the Michigan Department of Corrections. The Michigan Department of Corrections

was actively seeking Respondent's arrest as of the date he became an absconder.

3. On [REDACTED], 2017, Respondent completed his response to the Department's [REDACTED], 2017, Redetermination. In Respondent's response, Respondent did not respond to the question that was asked "is anyone [in your household] fleeing from felony prosecution, an outstanding felony warrant or jail?" The instructions preceding the question stated, "DO NOT answer the questions if reapplying for health care coverage only."
4. 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 redetermination truthfully and completely.
5. The Department issued FAP benefits to Respondent for the months after he submitted his completed his response to the Department's [REDACTED], 2017, Redetermination. The Department issued FAP benefits to Respondent for the months of August 2017 through December 2017.
6. Respondent did not report to the Department that he was an absconder of parole.
7. The Department investigated Respondent's case when it received a citizen complaint about Respondent. The Department determined that Respondent was ineligible for FAP benefits because he was an absconder of parole.
8. The Department attempted to contact Respondent to obtain an explanation from him, but the Department was unable to obtain an explanation from Respondent.
9. On October 1, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
10. The OIG requested recoupment of a \$964.00 overissuance of FAP benefits, and the OIG requested that Respondent be disqualified from FAP for 12 months for a first IPV.
11. 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 presented 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 was an absconder of parole. An individual who is violating a condition of probation or parole shall be considered ineligible for FAP benefits. 7 CFR 273.11(n).

The Department presented sufficient evidence to establish that Respondent was violating a condition of his parole as of [REDACTED], 2017. The Michigan Department of Corrections determined that Respondent was violating a condition of his parole, and the Department of Corrections began actively seeking Respondent's arrest. Petitioner did not provide any contradictory information.

All FAP benefits issued to Respondent after the date he became a parole absconder, [REDACTED], 2017, were overissued because Respondent was not eligible for any FAP benefits. The Department issued \$964.00 in FAP benefits to Respondent from August 2017 through December 2017, so Respondent was overissued \$964.00 in FAP benefits.

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 did not present sufficient evidence to establish that Respondent intentionally withheld or misrepresented information to obtain or increase his benefits. The Department alleged

that Respondent intentionally withheld or misrepresented information when he failed to report to the Department that he was fleeing from felony prosecution, an outstanding felony warrant or jail. Although the Department presented evidence that Respondent did not report that he was a parole absconder to the Department, the Department did not present sufficient evidence to establish that Respondent did so intentionally to obtain or increase his FAP benefits.

The Department alleged that Respondent intentionally withheld information on his completed response to the Department's [REDACTED], 2017, Redetermination. However, the Redetermination was regarding Medical Assistance and it specifically instructed Respondent not to complete the portion with questions about absconder status if he was only applying for Medical Assistance. The Department did not present any evidence to establish that Respondent's completed response to the Redetermination was intended by Respondent to apply for FAP benefits too. Thus, I must find based on the clear language of the Redetermination that it was only for Medical Assistance. Since it was only for Medical Assistance, Respondent followed the instructions on the Redetermination when he left the section on absconder status blank. Therefore, Respondent did not withhold any information.

Further, the Department did not present any evidence to establish that it instructed Respondent to report a change in his absconder status to the Department. Thus, the Department did not establish that Respondent knew he was supposed to report his change in absconder status to the Department. Therefore, even though Respondent did not report that he was a parole absconder, it cannot be considered an intentional program violation because there is no evidence that Respondent knew he 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 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.

DECISION AND ORDER

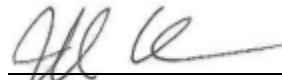
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of FAP benefits in the amount of \$964.00 that the Department is entitled to recoup.
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 the Department may initiate recoupment procedures for the amount of \$964.00 in accordance with Department policy.

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

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

Dawn Tromontine
41227 Mound Rd.
Sterling Heights, MI
48314

Macomb 36 County DHHS- via electronic
mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

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