



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: February 21, 2019  
MAHS Docket No.: 18-011505  
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 February 21, 2019, from Lansing, Michigan. The Department was represented by Derrick Gentry, Regulation Agent of the Office of Inspector General (OIG). Respondent, ██████████ ██████████ appeared and represented herself. Neither party had any additional witnesses.

**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. Respondent is the mother of ██████████ ██████████ a minor.
2. In 2015, ██████████ ██████████ moved from Michigan to Virginia to live with his father.

3. On [REDACTED] [REDACTED] 2016, Respondent applied for assistance from the Department, including FAP benefits. In Respondent's application, Respondent asserted that [REDACTED] [REDACTED] was a member of her household.
4. Respondent did not have any physical or mental impairment that would have limited her understanding or her ability to provide true and complete information.
5. [REDACTED] [REDACTED] was not a member of Respondent's household in October 2016.
6. Respondent was disqualified from FAP for non-cooperation with the Office of Child Support in October 2016.
7. The Department processed Respondent's application for assistance and found her household eligible for FAP benefits for a group size of one. Respondent's group size was composed solely of her son because Respondent was disqualified.
8. The Department issued \$1,164.00 in FAP benefits to Respondent from April 2017 through September 2017 based on a group size composed solely of her son.
9. The Department investigated Respondent's case and determined that it overissued her FAP benefits because her household did not have an eligible member.
10. The Department contacted Respondent, and Respondent advised the Department that her son was not living with her.
11. On November 1, 2018, the Department's OIG filed a hearing request to obtain an order (a) establishing that Respondent committed an intentional program violation and (b) establishing that Respondent owes the Department a debt for the FAP benefits she was overissued.
12. The Department's OIG requested that Respondent be disqualified from FAP for 12 months for a first IPV. The Department's OIG also requested recoupment of \$1,164.00 in FAP benefits issued to Respondent from April 2017 through September 2017.

### **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.

FAP eligibility is considered on a household basis. 7 CFR 273.10(a)(1). A household consists of those individuals who are living together and customarily purchase and prepare food together. 7 CFR 273.1. In general, the amount of FAP benefits a household is eligible to receive increases with each additional member.

Here, Respondent received FAP benefits from the Department based on a household that consisted of her son, [REDACTED] during a time which he was not a member of her household because he was living with his father in Virginia. Respondent was not eligible for FAP benefits herself because she was disqualified for refusing to cooperate with the Office of Child Support. Since neither Respondent nor her son were eligible household members, Respondent's household was not entitled to any FAP benefits because it did not have any eligible members. The Department presented sufficient evidence to establish that it overissued Respondent received \$1,164 in FAP benefits from April 2017 through September 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 completely and truthfully answer all questions on her application. BAM 105 (January 1, 2019), p.1. Respondent misrepresented her household size in her application because she asserted that her son, [REDACTED] was living with her when in fact he was living with his father in Virginia. Respondent did not provide any explanation for her misrepresentation. Respondent's misrepresentation 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 provide accurate information in her application and that providing accurate information in her application would have

caused her to be denied assistance. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to answer completely and truthfully.

**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 \$1,164.00 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 debt of \$1,164.00 in accordance with Department policy.

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

JK/nr



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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

**DHHS**

LaClair Winbush  
17455 Grand River  
Detroit, MI  
48227

Wayne 31 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], MI  
[REDACTED]