



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

ORLENE HAWKS  
DIRECTOR

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

Date Mailed: January 9, 2019  
MAHS Docket No.: 18-011582  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** John Markey

### **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 3, 2019, from Lansing, Michigan. The Department was represented by Scott Matwiejczyk, Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e). During the hearing, 86 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-86.

### **ISSUES**

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) with respect to the Food Assistance Program (FAP)?
2. Should Respondent be disqualified from receiving FAP benefits?

### **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] 2016, Respondent submitted to the Department an application for FAP benefits. Respondent informed the Department that nobody in the household had a job or any income from a job. Exhibit A, pp. 13-32.

2. Respondent signed the application and thereby certified that the information Respondent provided in the application was true. Further, Respondent acknowledged that he understood lying to or misleading the Department to get benefits could result in termination of his benefits, disqualification from receipt of future benefits, and the initiation of fraud proceedings against him. Exhibit A, pp. 13-32.
3. On [REDACTED], 2016, the Department issued to Respondent a Notice of Case Action informing Respondent that he was approved for FAP benefits based on a monthly income of \$[REDACTED]. The Notice of Case Action informed Respondent that "it is your responsibility...to notify this office within 10 days of any changes in your circumstances which may affect your eligibility for assistance. This includes changes in employment [and] income... Failure to report changes may make you liable to penalties provided by law for fraud." Accompanying the Notice of Case Action was a form titled Change Report. The Change Report form instructed Respondent to "[u]se this form to report changes about anyone in your home within 10 days of the time you learn of them." Exhibit A, pp. 33-38.
4. On [REDACTED] [REDACTED] 2016, Respondent began working for [REDACTED] ([REDACTED]) in [REDACTED] Michigan. Respondent's first paycheck was issued September 15, 2016. Respondent regularly worked for [REDACTED] and had earnings through at least August 2017. Exhibit A, pp. 39-40.
5. Respondent did not report his employment with or income from [REDACTED] to the Department.
6. From November 1, 2016, through May 31, 2017, the Department issued Respondent \$1,358 of FAP benefits based on a reported income of \$[REDACTED]. Respondent was only entitled to receive \$16 during that period. The Department has already established that Respondent received an overissuance of FAP benefits totaling \$1,342. Exhibit A, pp. 68-86.
7. On November 7, 2018, the Department's OIG filed a hearing request to establish an IPV. Exhibit A, pp. 1-6.
8. The Department's OIG requested that Respondent be disqualified from receiving FAP benefits for one year for a first alleged IPV. Exhibit A, pp. 1-6.
9. The Department considers the alleged fraud period to be from November 1, 2016, through May 31, 2017. Exhibit A, pp. 1-6.
10. Respondent did not have any apparent mental or physical impairment that would limit his understanding or ability to fulfill his reporting requirements.

## **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.

### **Overissuance**

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (October 2016), p. 1. When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1.

In this case, Respondent received more benefits than he was entitled to receive. The Department determined Respondent's eligibility without budgeting his wages from his employment with ██████████, which caused Respondent's income to be understated. Respondent's unreported income reduced the amount of FAP benefits that Respondent was eligible to receive. Prior to the hearing in this matter, the Department had already established that Respondent was overissued \$1,342 of Food Assistance Program benefits from November 1, 2016, through May 31, 2017.

### **Intentional Program Violation**

The Department's policy in effect at the time of Respondent's alleged IPV defined an IPV as an overissuance in which the following three conditions exist: (1) the client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination; (2) the client was clearly and correctly instructed regarding his or her reporting responsibilities; and (3) the client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill his or her reporting responsibilities. BAM 720 (January 2016), p. 1.

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. BAM 720, page 1; see also 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, the Department has met its burden. Respondent was required to report changes in his circumstances to the Department within 10 days of the date of the change. BAM 105 (October 2016), pp. 11-12. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days at the time of application and again on the Notice of Case Action mailed to Respondent the day after applying for benefits. Respondent failed to report that he became employed or had any income despite continuously working and receiving paychecks from September 2016 through at least sometime in August 2017.

Respondent's failure to report the income or employment change to the Department must be considered an intentional misrepresentation to maintain his FAP benefits since Respondent knew or should have known that he was required to report the change to the Department and that reporting the change to the Department would have caused the Department to recalculate and reduce his FAP benefits. Further bolstering this conclusion is the fact that Respondent allowed his FAP benefits case to expire at the end of the benefit period rather than fill out and return a Redetermination form that would have required Respondent to certify his employment status. Based on the combination of the lack of response to the Redetermination and the failure to report the change to income, it is clear that Respondent had an intent to deceive the Department regarding his household income in order to maximize his FAP benefits.

Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his reporting requirement. The Department has proven by clear and convincing evidence that Respondent committed an Intentional Program Violation.

### **Disqualification**

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, pp. 15-16. In general, clients are disqualified for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16.

In this case, there is no indication in the record that Respondent was previously found guilty of an IPV related to FAP benefits. Thus, this is Respondent's first IPV related to FAP benefits. Therefore, Respondent is subject to a one-year disqualification from receiving FAP benefits.

### **DECISION AND ORDER**

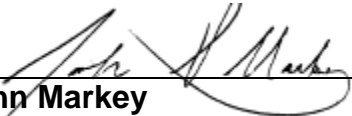
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to his FAP benefits.

2. Respondent is subject to a one-year disqualification from receiving FAP benefits.

IT IS ORDERED that Respondent shall be disqualified from receiving FAP benefits for a period of one year.

JM/hb

  
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**John Markey**  
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**

Alison Gordon  
430 Barfield Drive  
Hastings, MI 49058

Barry County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

**Petitioner**

OIG  
PO Box 30062  
Lansing, MI 48909-7562

**Respondent**

[REDACTED]  
[REDACTED], MI [REDACTED]