



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: January 15, 2019  
MAHS Docket No.: 18-012242  
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 January 10, 2019, from Lansing, Michigan. The Department was represented by Scott Matwiejczyk, Regulation Agent of the Office of Inspector General (OIG). Respondent, ██████████ ██████████ appeared and represented himself.

**ISSUES**

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from the Food Assistance Program (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 ██████████, 2017, the Department issued a Redetermination to Respondent to obtain information to review his eligibility for FAP. Respondent completed the Redetermination and returned it to the Department on ██████████ 2017. Respondent's completed Redetermination indicated that ██████████ ██████████ was his wife and that the household's sole source of income was social security.
2. On ██████████, 2017, ██████████ ██████████ began working at ██████████. ██████████ issued ██████████ ██████████ her first payroll remittance on ██████████, 2017.

3. On [REDACTED], 2018, [REDACTED] [REDACTED] reported to the Department that she began employment on [REDACTED]. Respondent had not previously reported to the Department that [REDACTED] [REDACTED] had obtained employment.
4. Respondent did not have any apparent physical or mental impairment that would have limited his understanding or ability to fulfill the Department's requirements.
5. The Department investigated Respondent's case after it discovered that his household had been overissued FAP benefits due to unreported income.
6. On November 30, 2018, the Department's OIG filed a hearing request to establish that Respondent committed an IPV.
7. The OIG requested Respondent be disqualified from FAP for 12 months for a first IPV.

### **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).

#### **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 moved to Florida. However, the Department did not

present any evidence to establish that it instructed Respondent to report a move or change in his residence to the Department, and Respondent denied ever having been instructed to report such a change to the Department. Thus, the Department did not establish that Respondent knew he was supposed to report his move or change in residence to the Department. Therefore, even though Respondent failed to report a move or change in residence, 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 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, 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. The Department has not established, by clear and convincing evidence, that Respondent committed an IPV.
2. Respondent should not be disqualified from FAP.

IT IS SO ORDERED.

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**

Lynne Greening  
2700 Baker Street  
PO Box 4290  
Muskegon Heights, MI  
49444

Muskegon 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]