



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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

Date Mailed: April 29, 2019
MOAHR Docket No.: 18-012351
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 April 25, 2019, from Lansing, Michigan. The Department was represented by Allyson Carneal, 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] 2012, Respondent applied for assistance from the Department, including FAP benefits. Thereafter, Respondent received FAP benefits from the Department.
2. While Respondent was receiving FAP benefits from the Department, Respondent was incarcerated at the Calhoun County jail for multiple terms. Respondents terms

of incarceration included: January 14 through May 10, 2013; February 7 through April 15, 2015; June 8, 2015, through March 4, 2016; and July 21 through December 28, 2017.

3. Respondent did not report to the Department that he was incarcerated during any of these terms of incarceration.
4. The Department continued to issue FAP benefits to Respondent while he was incarcerated.
5. Respondent's FAP benefits were used while Respondent was incarcerated.
6. When the Department discovered Respondent's FAP benefits were used while he was incarcerated, the Department initiated an investigation.
7. The Department attempted to contact Respondent to obtain his explanation, but the Department was unable to obtain Respondent's explanation.
8. On November 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 \$1,362.00 overissuance of FAP benefits, and the OIG requested that Respondent be disqualified from the Food Assistance Program 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). An overissuance is the amount of benefits issued to a client in excess of what the client was eligible to receive. BAM 700 (October 1, 2018), p.1. When a client group receives more benefits than entitled to receive, the

Department must attempt to recoup the overissuance. BAM 700, p. 1. In this case, Respondent received more FAP benefits than he was entitled to receive.

An individual who is incarcerated for more than 30 days is ineligible for benefits. BAM 804 (October 1, 2018), p. 1. Respondent was incarcerated for more than 30 days on four separate terms of incarceration. For each term of incarceration for more than 30 days, Respondent was ineligible for FAP benefits once he had been incarcerated for more than 30 days. All FAP benefits issued to Respondent after he had been incarcerated for more than 30 days were overissued to Respondent because he was not entitled to those FAP benefits. The Department presented sufficient evidence to establish that Respondent was overissued \$1,362.00.

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 committed an IPV when he failed to report to the Department that he either had been incarcerated for more than 30 days or that his address had changed. The Department did not present sufficient evidence to establish that Respondent committed an IPV. The Department did not present any evidence to establish that it instructed Respondent to report either when he had been incarcerated for more than 30 days or when he had a change in his address. Thus, the Department did not establish that Respondent knew he was supposed to report his incarceration or change of address to the Department. Therefore, since there is no evidence Respondent knew or should have known that he was supposed to report such a change to the Department, his failure to report the change cannot be considered an IPV.

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 \$1,362.00 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 the Food Assistance Program (FAP).

IT IS ORDERED that the Department may initiate recoupment procedures for the amount of \$1,362.00 in accordance with Department policy.

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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Carisa Drake
190 East Michigan
Battle Creek, MI
49016

Calhoun 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

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