



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: April 3, 2019  
MAHS Docket No.: 18-012362  
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 April 2, 2019, from Lansing, Michigan. The Department was represented by Valerie Mathis, Regulation Agent of the Office of Inspector General (OIG). Respondent, ██████ ██████ appeared with her fiancé, ██████ ██████. 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. On June 16, 2000, ██████ ██████ was convicted of a drug-related felony for an offense occurring after August 22, 1996.
2. On March 27, 2003, ██████ ██████ was convicted of another drug-related felony for an offense occurring after August 22, 1996.
3. Respondent has been in a relationship with ██████ ██████ since 2007.

4. Respondent was unaware of [REDACTED] [REDACTED] convictions until Respondent was notified about this case.
5. On [REDACTED] [REDACTED] 2014, Respondent applied for assistance from the Department, including FAP benefits. Respondent asserted in the application that [REDACTED] [REDACTED] was a member of her household. Respondent answered "No" in the application when asked if anyone in her household had been convicted of a drug felony.
6. Respondent did not have any apparent physical or mental impairment that would limit her understanding or her ability to fulfill her responsibilities to the Department.
7. The Department included [REDACTED] [REDACTED] in Respondent's group and issued FAP benefits to Respondent based on a group size which included [REDACTED] [REDACTED]
8. On [REDACTED] [REDACTED] 2015, Respondent applied for assistance from the Department, including FAP benefits. Respondent asserted in the application that [REDACTED] [REDACTED] was a member of her household. Respondent answered "No" in the application when asked if anyone in her household had been convicted of a drug felony.
9. The Department included [REDACTED] [REDACTED] in Respondent's group and issued FAP benefits to Respondent based on a group size which included [REDACTED] [REDACTED]
10. The Department investigated Respondent's case and determined that Respondent was overissued FAP benefits because [REDACTED] [REDACTED] was included as a group member when he should have been disqualified because of his felony drug convictions.
11. On November 27, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
12. The OIG requested recoupment of a \$2,573.00 overissuance of FAP benefits issued from May 1, 2014, through November 30, 2015. The OIG requested that 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).

### **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 (October 1, 2018), p. 1.

In this case, the Department presented sufficient evidence to establish that Respondent received more FAP benefits than she was entitled to receive. The Department alleged that Respondent received more FAP benefits than she was entitled to receive because her group member, [REDACTED] [REDACTED] had two unreported felony drug convictions for offenses occurring after August 22, 1996. An individual who has been convicted of two or more felony drug offenses which occurred after August 22, 1996, is ineligible for FAP benefits. 21 USC 862a and 2017 PA 107, Article X, Part 2, Section 619. The Department presented sufficient evidence to establish that [REDACTED] [REDACTED] was included as a member of Respondent's group and that [REDACTED] [REDACTED] had been convicted of two felony drug offenses which occurred after August 22, 1996.

[REDACTED] [REDACTED] was ineligible for FAP benefits as of the date of his second felony drug conviction, March 27, 2003. Respondent applied for FAP benefits after March 27, 2003 and included [REDACTED] [REDACTED] as a household member. Since [REDACTED] [REDACTED] was ineligible for FAP benefits based on his felony drug convictions, he should not have been included as a member of Respondent's group. [REDACTED] [REDACTED] inclusion as a member of Respondent's group caused Respondent's FAP benefit amount to be greater than it would have been without his inclusion. Since [REDACTED] [REDACTED] was ineligible for FAP benefits, Respondent was not entitled to the benefits that were issued based on his inclusion as a group member.

The Department presented sufficient evidence to establish that \$2,573.00 in FAP benefits were issued to Respondent based on [REDACTED] [REDACTED] inclusion as a member of Respondent's group. Since Respondent was not entitled to the \$2,573.00 in FAP benefits issued based on [REDACTED] [REDACTED] inclusion as a group member, Respondent was overissued \$2,573.00 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 asserted that Respondent committed an IPV when she answered “No” in her applications when asked if anyone in her household had been convicted of a drug felony. Although Respondent answered “No” in her applications when asked if anyone in her household had been convicted of a drug felony, the Department did not present sufficient evidence to establish that Respondent knew or should have known that she should have answered “Yes” because █████ █████ had been convicted of a drug felony. Respondent testified that she had no knowledge that █████ █████ had been convicted of drug related felonies when she completed the applications, and █████ testified that he had not shared any information about his drug related felony convictions with Respondent. The Department did not present any evidence to contradict their testimony.

### **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, there is no evidence that Respondent committed an IPV, so Respondent is not subject to a disqualification.

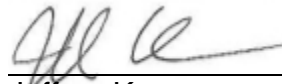
### **DECISION AND ORDER**

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 \$2,573.00 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 \$2,573.00 in accordance with Department policy.

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

**Petitioner**

OIG  
PO Box 30062  
Lansing, MI  
48909-7562

Wayne 19 County DHHS- via electronic  
mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

**DHHS**

Susan Noel  
26355 Michigan Ave.  
Inkster, MI  
48141

**Respondent**

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