



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
MI [REDACTED]

Date Mailed: April 8, 2019  
MAHS Docket No.: 18-012449  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [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 3, 2019, from Lansing, Michigan. The Department was represented by Dana Daniels, Regulation Agent of the Office of Inspector General (OIG). Respondent, [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] 2010, Respondent applied for assistance from the Department, including FAP benefits. In the application, Respondent reported that his household did not have any income from employment. The Department instructed Respondent to report all changes which could affect his eligibility for assistance to the Department within 10 days of the date of the change, including changes in employment and income.

2. Respondent did not have any apparent physical or mental impairment that would limit his understanding or his ability to fulfill his responsibilities to the Department.
3. On July 30, 2012, Respondent began employment at [REDACTED] [REDACTED] [REDACTED]
4. On August 14, 2012, the Department issued a Redetermination to Respondent to obtain information to review his eligibility for assistance. In Respondent's response, Respondent asserted that his household did not have any income.
5. On August 17, 2012, [REDACTED] [REDACTED] [REDACTED] issued Respondent his first paycheck.
6. On September 13, 2013, the Department issued a Redetermination to Respondent to obtain information to review his eligibility for assistance. In Respondent's response, Respondent asserted that his household did not have any income.
7. Respondent remained employed by [REDACTED] [REDACTED] [REDACTED] through October 2014.
8. Respondent did not report his employment to the Department.
9. The Department issued FAP benefits to Respondent without budgeting Respondent's income from employment.
10. The Department investigated Respondent's case and determined that Respondent was overissued FAP benefits because he had unreported income.
11. On November 28, 2018, the Department's OIG filed a hearing request to establish that Respondent was overissued FAP benefits and that Respondent committed an IPV.
12. The OIG requested Respondent be disqualified from FAP for 12 months for a first IPV. The OIG requested recoupment of \$2,838.00 in FAP benefits issued from October 2012 through October 2014.

### **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, Respondent received more benefits than he was entitled to receive because he had unreported income. FAP benefits are income-based, so the amount of income a household has determines the household's FAP benefit. Here, the Department overissued FAP benefits to Respondent because the Department issued FAP benefits to Respondent based on an income of \$[REDACTED] when Respondent had a greater income which reduced his household's FAP benefit amount. The Department presented sufficient evidence to establish that Respondent was overissued \$2,838.00 in FAP benefits from October 2012 through October 2014.

### **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 report changes in his circumstances to the Department within 10 days of the change. 7 CFR 273.12(a)(2). The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days, including changes in his employment and income. Respondent failed to report that he obtained employment within 10 days of the date he received his first paycheck from his employer. Respondent also withheld information about his employment when he responded to the Department's Redeterminations. Respondent's failure to his employment to the Department must be considered an intentional misrepresentation to maintain or obtain benefits from the Department since Respondent knew or should have known that he was required to report it to the Department and that reporting it would have caused his benefits to be reduced. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his reporting requirement.

## **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**

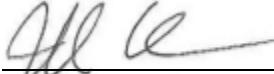
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of FAP benefits in the amount of \$2,838.00 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 amount of \$2,838.00 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

**Petitioner**

OIG  
PO Box 30062  
Lansing, MI  
48909-7562

Genesee Union St. County DHHS- via  
electronic mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

**DHHS**

Tamara Morris  
125 E. Union St 7th Floor  
Flint, MI  
48502

**Respondent**

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