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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: February 25, 2019
MAHS Docket No.: 18-013610
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 February 21, 2019, from Lansing, Michigan. The Department was represented by Derrick Gentry, 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)(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 ██████ ██████ 2015, the Department issued a Redetermination to Respondent to obtain information to review his eligible for assistance.
2. On June 8, 2015, the Department received Respondent's completed Redetermination in which Respondent asserted that he resides in a household by himself and that his household did not have any income.

3. The Department issued Respondent FAP benefits based on the information Respondent provided to the Department.
4. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his responsibilities to the Department.
5. On ■■■■■ 2016, Respondent applied for assistance from the Department. In Respondent's application, Respondent again asserted that he resides in a household by himself and that his household did not have any income.
6. The Department issued Respondent FAP benefits based on the information Respondent provided to the Department.
7. The Department investigated Respondent's case and determined that Respondent shared a household with his spouse and that his household had income from his spouse's employment. The Department determined that Respondent was overissued FAP benefits because he had unreported income.
8. The Department reached its conclusion based solely on information it obtained from CLEAR reports it ran for Respondent and his spouse. The reports indicated that Respondent and his spouse owned a home together and that they used the same address.
9. The Department attempted to obtain an explanation from Respondent, but the Department was unable to obtain an explanation from Respondent.
10. On December 10, 2018, the Department's OIG filed a hearing request to establish that Respondent committed an IPV and that Respondent owes the Department a debt for the FAP benefits he was overissued.
11. The Department requested that Respondent be disqualified from FAP for 12 months for a first IPV, and the Department requested the establishment of a debt of \$2,136.00 for the FAP benefits Respondent was overissued.
12. 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). When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (January 1, 2018), p. 1.

The Department alleged that Respondent was overissued FAP benefits because his household had unreported income. The Department alleged that Respondent failed to report to the Department that his spouse was living in his household and had income. The Department did not present sufficient evidence to support its allegation that Respondent's spouse was living in his household. The Department relied solely on CLEAR reports it ran for Respondent and his spouse as the basis for its allegation. All the information in the CLEAR reports is hearsay and unreliable without some corroboration. The Department did not present any evidence to corroborate the information it found in the CLEAR reports, so the information in the CLEAR reports cannot be used to establish the Department's allegation.

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 misrepresented or withheld information from the Department when he failed to report that his spouse was living in his household and had income. As explained in the overissuance section, the Department did not establish that Respondent's spouse was living with him. Thus, there is no evidence that Respondent intentionally withheld or misrepresented information 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.

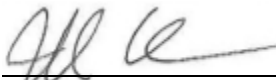
DECISION AND ORDER

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. Respondent did not receive an overissuance of FAP benefits.
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 SO ORDERED.

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 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

LaClair Winbush
17455 Grand River
Detroit, MI
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Wayne 31 County DHHS- via electronic
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MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

Petitioner

OIG
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Respondent

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