



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] OH [REDACTED]

Date Mailed: February 20, 2019
MAHS Docket No.: 18-013616
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 February 20, 2019, from Lansing, Michigan. The Department was represented by Gary Shuk, 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] 2018, Respondent obtained employment at [REDACTED] [REDACTED]
2. On [REDACTED] [REDACTED] 2018, [REDACTED] [REDACTED] issued Respondent her first payroll remittance.
3. On [REDACTED] [REDACTED] 2018, Respondent applied for assistance from the Department, including FAP benefits. In the application Respondent submitted to the

Department, Respondent asserted that she was homeless and that she lived in Genesee County, Michigan. Respondent asserted that she was not employed. Respondent provided a mailing address of [REDACTED], Flint.

4. 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.
5. On May 2, 2018, the Department mailed correspondence to Respondent at [REDACTED], Flint. The mail was returned to the Department as undeliverable.
6. From May through September 2018, Respondent used her electronic benefit transfer (EBT) card exclusively in Ohio.
7. As of November 12, 2018, Respondent's address on file with [REDACTED] [REDACTED] was [REDACTED] [REDACTED] in [REDACTED] Ohio.
8. The Department investigated Respondent's case and determined that she was not a Michigan resident at the time she applied for assistance from the Department.
9. The Department attempted to contact Respondent to obtain an explanation from her, but the Department was unable to obtain an explanation from Respondent.
10. On December 11, 2018, the Department's OIG filed a hearing request to obtain an order (a) establishing that Respondent committed an intentional program violation and (b) establishing that Respondent owes the Department a debt for the FAP benefits she was overissued.
11. The Department's OIG requested that Respondent be disqualified from FAP for 12 months for a first IPV. The Department's OIG also requested recoupment of \$576.00 in FAP benefits issued to Respondent from May through July 2018.
12. A notice of hearing was mailed to Respondent at her 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.

Only a resident of Michigan is eligible for assistance from the Department. BEM 220 (April 1, 2018), p. 1. For FAP, an individual is a resident if she lives in Michigan for any purpose other than a vacation, regardless of whether she has an intent to remain permanently. BEM 220, p. 1.

Here, the Department alleged that Respondent was not a resident at the time she applied for assistance from the Department on [REDACTED] [REDACTED] 2018, or anytime thereafter while she was receiving assistance from the Department. The Department presented evidence that (a) mail sent to Respondent at the mailing address she provided was returned as undeliverable, (b) Respondent completed all EBT transactions in Ohio, and (c) Respondent's address on file with her employer was an address in Ohio. Respondent did not provide any testimony or other evidence to contradict the Department's evidence.

The Department presented sufficient evidence to establish that Respondent was not living in Michigan as of the date she filed her application for assistance. Respondent was living in Ohio as evidenced by her EBT card usage and her employment. Since Respondent was living in a state other than Michigan, Respondent was not a resident of Michigan. Since Respondent was not a resident of Michigan, Respondent was ineligible for benefits from the Department. Thus, Respondent was not entitled to the benefits she received from the Department while she was living in Ohio. The Department presented sufficient evidence to establish that it overissued \$576.00 in FAP benefits to Respondent from May 2018 through July 2018.

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 completely and truthfully answer all questions on her application. BAM 105 (January 1, 2019), p.1. Respondent misrepresented her state of residence in her application because she asserted that she was living in Michigan when in fact she was living in Ohio, and Respondent withheld information about her employment at [REDACTED] [REDACTED] in her application because she did not disclose her employment when asked. Respondent did not provide any explanation for her misrepresentations. Respondent's misrepresentations must be considered an intentional misrepresentation to maintain or obtain benefits from the Department since Respondent knew or should have known that she was required to provide accurate information in her application and that providing accurate information in her application would have caused her to be denied assistance. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to answer completely and truthfully.

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

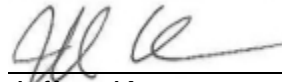
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of FAP benefits in the amount of \$576.00 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 debt of \$576.00 in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall be disqualified from FAP for a period of 12 months.

JK/nr



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

Mark Epps
4809 Clio Road
Flint, MI
48504

Genesee Clio 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

[REDACTED]
[REDACTED]
[REDACTED], OH
[REDACTED]