



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.: 18-013652  
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 Titles 7 and 42 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16 and 42 CFR 431.230(b). After due notice, a telephone hearing was held on April 2, 2019, from Lansing, Michigan. The Department was represented by Amanda Zimmerman, Regulation Agent of the Office of Inspector General (OIG). Respondent, ██████████ ██████████ did not appear. The hearing was held in Respondent's absence.

**ISSUES**

1. Did Respondent receive an overissuance (OI) of Medical Assistance (MA) and 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, Respondent applied for assistance from the Department, including MA. In the application, Respondent asserted that her household did not have any income. The Department instructed Respondent to report all changes which could affect her eligibility for assistance to the Department within 10 days of the date of the change, including changes in employment and income.

2. On February 9, 2015, the Department issued a Health Care Coverage Determination Notice to Respondent to notify her that she was eligible for MA effective February 1, 2015. The Department again instructed Respondent to report all changes which could affect her eligibility for assistance to the Department within 10 days of the date of the change, including changes in employment and income.
3. Respondent did not have any apparent physical or mental impairment that would limit her understanding or her ability to fulfill her reporting responsibility.
4. On [REDACTED] [REDACTED] 2015, the Department issued a Redetermination to Respondent to obtain information to review her eligibility for assistance.
5. On [REDACTED] [REDACTED] 2016, Respondent completed the Redetermination. Respondent asserted that her household did not have any income.
6. On [REDACTED] [REDACTED] 2016, Respondent began employment at [REDACTED]. Respondent received \$ [REDACTED] per week.
7. On [REDACTED], 2016, [REDACTED] issued Respondent her first paycheck. [REDACTED] issued paychecks to Respondent regularly thereafter.
8. Respondent did not report her employment or income to the Department.
9. The Department continued to provide assistance to Respondent as if she did not have any income.
10. The Department investigated Respondent's case and determined that it overissued MA and FAP benefits to Respondent because she had unreported income.
11. The Department attempted to contact Respondent to obtain her explanation for failing to report her employment and income, but the Department was unable to obtain Respondent's explanation.
12. On December 13, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of MA and FAP benefits and that Respondent committed an IPV.
13. The OIG requested Respondent be disqualified from FAP for 12 months for a first IPV. The OIG requested recoupment of \$4,283.64 in MA benefits issued from July 1, 2016, through December 31, 2016, and \$2,009.00 in FAP benefits issued from June 1, 2016, through December 31, 2016.
14. 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**

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10 and MCL 400.105-.112k.

### **Overissuance**

An overissuance is the amount of benefits issued to the client group in excess of what it 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.

The Department did not present sufficient evidence to establish that Respondent received MA that she was not entitled to. The Department provided MA to Respondent through the Healthy Michigan Plan based on her income. However, the Department was unaware Respondent had income from employment. Respondent received \$██████ per week from her employment, so Respondent's income was \$██████ per year or \$██████ per month. The income limit for MA through the Healthy Michigan Plan for a family of two in 2016 was \$██████ per month. Based on Respondent's income from employment and Respondent's household size, Respondent was eligible for MA through the Healthy Michigan Plan because her income was less than the program limit. The Department did not present any evidence to establish that Respondent had any other income which would have put her over the program limit, so I must find that Respondent did not receive any MA that she was not entitled to receive.

The Department presented sufficient evidence to establish that Respondent received FAP benefits that she was not entitled to. The Department provided FAP benefits to Respondent based on her income. However, the Department was unaware Respondent had income from employment. Respondent's income from employment reduced the amount of FAP benefits she was eligible for. Since the Department issued

more FAP benefits to Respondent than what she was eligible for, Respondent received FAP benefits that she was not entitled to. Therefore, she was overissued FAP benefits. The Department alleged that Respondent was overissued \$2,009.00 in FAP benefits, but the Department did not present sufficient evidence to establish that Respondent was overissued FAP benefits in that amount.

When the Department calculated Respondent's FAP benefit overissuance amount, the Department added \$[REDACTED] of income each month in addition to Respondent's unreported income from employment. This \$[REDACTED] of monthly income was not included in the Department's original budget when it determined Respondent's FAP benefit amount, and the Department did not present any evidence to establish that Respondent had this additional income. Therefore, the Department only established that an overissuance occurred as a result of Respondent's unreported income from employment. Respondent was only overissued \$1,688.00 in FAP benefits when only Respondent's unreported income from employment is considered.

### **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 her 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 her employment and income. Respondent did not report that she obtained employment within 10 days of the date her employer issued her first paycheck. Respondent did not provide any explanation for her inaction. Respondent's failure to report this change 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 she was required to report the change to the Department and that reporting the change to the Department would have caused her benefits to cease. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her 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)(1). 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 did not receive an overissuance of MA, but Respondent received an overissuance of \$1,688.00 in FAP benefits 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 \$1,688.00 in FAP benefits 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

**DHHS**

Dawn Tromontine  
41227 Mound Rd.  
Sterling Heights, MI  
48314

Macomb 36 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] MI  
[REDACTED]