



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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Date Mailed: May 6, 2019
MOAHR Docket No.: 18-013797
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 May 1, 2019, from Lansing, Michigan. The Department was represented by LaChaunda Walker, 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 ██████████ ██████████ 2016, Respondent applied for assistance from the Department, including FAP benefits. In the application, Respondent asserted that he was a resident of the state of Michigan. 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 address.

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. In April 2017, Respondent began receiving FAP benefits from the state of Florida.
4. Respondent had not reported to the Department that he moved out of state or that he had a change of address.
5. Both the Department and Florida issued FAP benefits concurrently to Respondent from April 2017 through July 2017.
6. On [REDACTED] [REDACTED] 2017, Respondent applied for assistance from the Department, including FAP benefits. In the application, Respondent asserted that he was a resident of the state of Michigan. 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 address.
7. Both the Department and Florida issued FAP benefits concurrently to Respondent from September 2017 through October 2018.
8. The Department investigated Respondent's case and determined that he was issued FAP benefits concurrently by the Department and Florida.
9. The Department attempted to contact Respondent to obtain an explanation for his concurrent receipt of benefits, but Respondent did not respond to the Department's attempts.
10. On December 20, 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 benefits overissued.
11. The Department requested Respondent be disqualified from receiving program benefits for 10 years for a first IPV involving the concurrent receipt of benefits, and the Department requested the establishment of a debt of \$2,832.00 for the value of benefits overissued from April 2017 through October 2018.
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.

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 he lives in Michigan for any purpose other than a vacation, regardless of whether he has an intent to remain permanently. BEM 220, p. 1. An individual cannot receive FAP benefits from more than one state for the same month. BEM 222 (October 1, 2016), p. 3. A negative action must take effect no later than the month after the change when there is reliable information that a group has left the state. BAM 220 (July 1, 2018), p. 5.

Here, the Department alleged that Respondent was overissued \$2,832.00 in FAP benefits from April 2017 through October 2018, but the Department did not present sufficient evidence to establish its alleged overissuance. The Department alleged that Respondent was not a Michigan resident at the time he received benefits from the Department because he was also receiving benefits from Florida. While it is true that Respondent was receiving benefits from Florida at the same time that he was receiving them from the Department, that fact does not establish that Respondent was not a resident of Michigan. Respondent could have been living in Michigan and misrepresenting information to Florida. The Department did not present sufficient evidence to corroborate its allegation. Therefore, there is insufficient evidence to establish an overissuance.

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 did not present sufficient evidence to establish that Respondent misrepresented information to the Department. Although it is very likely that Respondent misrepresented information about his residence either to the Department or Florida, the Department did not present sufficient evidence to establish that Respondent misrepresented information to the Department. The Department did not establish that Respondent was not a resident of Michigan during the time he received FAP benefits from 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, Respondent is not disqualified from receiving FAP benefits because there is no evidence he committed an IPV.

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 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 SO ORDERED.

JK/nr



Jeffrey Kemm
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

