



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

Date Mailed: May 6, 2019  
MOAHR Docket No.: 18-013801  
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 May 1, 2019, from Lansing, Michigan. The Department was represented by Jonetta Greene, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] [REDACTED] appeared and represented herself.

**ISSUES**

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent receive an overissuance (OI) of Medical Assistance (MA) that the Department is entitled to recoup?
3. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
4. 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] 2017, Respondent applied for assistance from the Department, including FAP benefits and MA.

2. The Department provided FAP benefits and MA to Respondent. Respondent's child, [REDACTED] was included as a member of Respondent's household and the Department provided MA for her.
3. Respondent's child, [REDACTED] received assistance from the state of Florida beginning in February 2017.
4. Respondent did not report to the Department that her child, [REDACTED] was no longer in her household.
5. The Department continued to issue FAP benefits to Respondent based on a group size that included Respondent's child, [REDACTED]. The Department also continued to provide MA for Respondent's child, [REDACTED].
6. The Department investigated Respondent's case and determined that Respondent was overissued assistance because Respondent did not report a household member moved out of Respondent's household.
7. The Department attempted to contact Respondent to obtain her explanation, but the Department was unable to obtain Respondent's explanation.
8. On December 27, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
9. The OIG requested Respondent be disqualified from FAP for 12 months for a first IPV. The OIG requested recoupment of \$905.00 in FAP benefits and \$628.24 in MA for benefits issued from June 2017 through October 2017.

### **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 (January 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.

Only a resident of Michigan is eligible for assistance from the Department. BEM 220 (April 1, 2018), p. 1. For MA, an individual is a resident if she lives in Michigan except for a temporary absence. BEM 220, p. 2. 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. An individual cannot receive FAP benefits from more than one state for the same month. BEM 222 (October 1, 2018), p. 3.

The Department established that Respondent was overissued FAP. The Department presented sufficient evidence to establish that Respondent's child, [REDACTED] was not living in Michigan during the time that Respondent's household was receiving FAP benefits based on a group size including her. Since Respondent's child was not living in Michigan, she was not a resident of Michigan and she was not eligible for FAP benefits from the Department. Therefore, Respondent was overissued the FAP benefits that were issued to Respondent based on the inclusion of her non-resident child.

The Department alleged that Respondent was overissued \$905.00 in FAP benefits from June 2017 through October 2017. However, the Department did not present sufficient evidence to establish an overissuance in the amount alleged. The Department's only alleged reason for the overissuance was the inclusion of a non-resident group member. The Department did not present any evidence to establish that there was an overissuance for any other reason, so the overissuance amount is the difference in the amount that was issued to Respondent's household including the non-resident group member minus the amount that should have been issued to Respondent's household excluding the non-resident group member. Upon a review of the applicable food assistance issuance tables, the FAP overissuance was \$608.00.

The Department established that Respondent was overissued MA. The Department presented sufficient evidence to establish that Respondent's child, [REDACTED] was not living in Michigan during the time that Respondent's household was receiving MA for her. Since Respondent's child was not living in Michigan, she was not a resident of Michigan and she was not eligible for MA from the Department. Therefore, Respondent was overissued the MA that was issued to Respondent for her child. The Department presented sufficient evidence to establish that the cost of the MA was \$628.24, so that is the amount of the MA 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 intentionally withheld or misrepresented information to obtain or increase her benefits. The Department alleged that Respondent intentionally withheld or misrepresented information when she failed to report to the Department that her child moved out of her household. However, the Department did not present any evidence to establish that it instructed Respondent to report such a change to the Department, and Respondent denied ever having been instructed to report such a change to the Department. Thus, the Department did not establish that Respondent knew she was supposed to report the change to the Department. Therefore, even though Respondent failed to report that her child moved out of her household, it cannot be considered an intentional program violation because there is no evidence that Respondent knew she was supposed to report such a change 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**

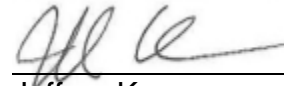
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of \$608.00 in FAP benefits that the Department is entitled to recoup.
2. Respondent received an overissuance of \$628.24 in MA that the Department is entitled to recoup.
3. The Department has not established, by clear and convincing evidence, that Respondent committed an IPV.
4. Respondent should not be disqualified from FAP.

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$608.00 in FAP benefits and \$628.24 in MA in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall not be disqualified from FAP.

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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention:

MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules  
Reconsideration/Rehearing Request

P.O. Box 30639

Lansing, Michigan 48909-8139

**DHHS**

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**Petitioner**

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**Respondent**

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