



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: April 29, 2019  
MOAHR Docket No.: 19-000871  
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 April 25, 2019, from Lansing, Michigan. The Department was represented by Thomas Lilienthal, 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, the Department instructed Respondent to report all changes to the Department which could affect her eligibility for assistance, including changes in address.

2. On June 26, 2018, Respondent began using her FAP benefits exclusively in Missouri.
3. On July 23, 2018, Respondent obtained employment with [REDACTED] [REDACTED]. Respondent provided [REDACTED] with her address, which was an address in Missouri.
4. On August 1, 2018, Respondent obtained employment with [REDACTED]. Respondent provided [REDACTED] with her address, which was an address in Missouri.
5. On August 17, 2018, Respondent obtained employment with [REDACTED] [REDACTED]. Respondent provided [REDACTED] with her address, which was an address in Missouri.
6. Respondent did not report to the Department that she had a change in address.
7. Respondent did not have any apparent physical or mental impairment that would limit her understanding or her ability to fulfill her reporting responsibility.
8. The Department investigated Respondent's case when it noticed she was completing EBT transactions out of state.
9. The Department attempted to contact Respondent, but the Department was unable to obtain an explanation from Respondent.
10. The Department visited Respondent's address of record in Michigan. The Department interviewed Respondent's neighbors who advised that Respondent had moved to Missouri in July 2018.
11. On January 7, 2019, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
12. The OIG requested Respondent be disqualified from FAP for 12 months for a first IPV. The OIG requested recoupment of \$642.00 in FAP benefits for benefits issued from August 2018 through November 2018.
13. 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 (October 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.

Here, the Department presented sufficient evidence to establish that Respondent was not living in Michigan beginning in July 2018. Respondent was living in Missouri as evidenced by (a) the statements obtained from her former neighbors, (b) her employment records, and (c) her EBT transactions. 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 Missouri. The Department presented sufficient evidence to establish that it overissued \$642.00 in FAP benefits to Respondent from August 2018 through November 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 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 address.

Respondent failed to report that her address changed within 10 days of the date she moved to Missouri. 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). 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**

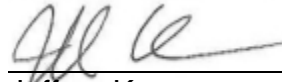
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of FAP benefits in the amount of \$642.00 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 amount of \$642.00 in accordance with Department policy.

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

JK/nr



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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**

Kimberly Kilmer  
800 Watertower  
Big Rapids, MI  
49307

Mecosta 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] MO  
[REDACTED]