



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
OH [REDACTED]

Date Mailed: July 15, 2019
MOAHR Docket No.: 19-003408
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [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 July 11, 2019, from Lansing, Michigan. The Department was represented by Maria Williams, 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).

One exhibit was admitted into evidence during the hearing. A 53-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

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] 2017, Respondent applied for assistance from the Department, including FAP benefits.

2. On [REDACTED] 2017, Respondent applied for assistance from Ohio. Respondent asserted on his application that his address was in Ohio.
3. Respondent did not report to the Department that he had moved to Ohio.
4. Both the Department and Ohio issued FAP benefits to Respondent concurrently, and Respondent used the FAP benefits issued by both.
5. Respondent did not have any apparent physical or mental impairment that would have limited his understanding or ability to fulfill his reporting requirement.
6. The Department investigated Respondent's case and determined that he was issued FAP benefits concurrently by the Department and Ohio.
7. 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.
8. On March 20, 2019, 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.
9. 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 \$968.00 for the value of benefits overissued from June 2017 through October 2017.
10. 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, 2018), 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 (April 1, 2019), p. 5.

The Department's evidence showed that Respondent first moved to Ohio in June 2017, and it showed that Respondent first received FAP benefits from Ohio in June 2017. The FAP benefits issued from June 2017 through October 2017 were overissued. Those benefits were overissued because Respondent was no longer a resident of Michigan and he was receiving benefits from another state. The Department presented sufficient evidence to establish that the amount of the overissuance was \$968.00.

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 any evidence to establish that Respondent misrepresented his identity or residence to the Department to obtain concurrent benefits. Further, the Department did not present sufficient evidence to establish that Respondent intentionally withheld or misrepresented information to obtain or increase his benefits. The Department alleged that Respondent intentionally withheld or misrepresented information when he failed to report to the Department that he moved to Ohio. However, the Department did not present any evidence to establish that it instructed Respondent to report a move or change in his residence to the Department. Thus, the Department did not establish that

Respondent knew he was supposed to report his move or change in residence to the Department. Therefore, even though Respondent failed to report a move or change in residence, it cannot be considered an intentional program violation because there is no evidence that Respondent knew he 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 \$968.00 in 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 ORDERED THAT the Department may initiate recoupment procedures for the amount of \$968.00 in FAP benefits in accordance with Department policy.

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 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

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Oakland 4 County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

DHHS

Renee Swiercz
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48342

Respondent

[REDACTED] OH