



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
MI [REDACTED]

Date Mailed: June 19, 2019  
MOAHR Docket No.: 19-003867  
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 June 13, 2019, from Lansing, Michigan. The Department was represented by Nicole Heinz-Hosking, 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. An 89-page packet of documents provided by the Department was admitted 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 October 24, 2012, Respondent pled guilty to a controlled substance felony in the 30<sup>th</sup> Judicial Circuit Court in case [REDACTED].

2. On October 24, 2012, Respondent pled guilty to a controlled substance felony in the 30<sup>th</sup> Judicial Circuit Court in case [REDACTED].
3. On [REDACTED] [REDACTED] 2015, Respondent applied for assistance from the Department, including FAP benefits. In the application, the Department asked Respondent whether he had been convicted of a drug felony and whether he had been convicted of a drug felony more than once. Respondent answered "No" when asked if he had been convicted of a drug felony more than once.
4. Respondent did not have any apparent physical or mental impairment which would have limited his understanding or his ability to answer the questions on his application truthfully and completely.
5. The Department approved Respondent for FAP benefits based on the information he provided in his application.
6. The Department later investigated Respondent's case and determined that Respondent had two or more felony drug convictions for offenses occurring after August 22, 1996, which he had not reported. The Department determined that it overissued Respondent \$3,650.00 in FAP benefits from October 2011 through September 2016.
7. The Department attempted to contact Respondent to obtain his explanation, but the Department was unable to obtain an explanation from Respondent.
8. On April 9, 2019, 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 recoupment of a \$3,650.00 overissuance of FAP benefits, and the OIG requested that Respondent be disqualified from the Food Assistance Program for 12 months for a first IPV.
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.

In this case, the Department presented sufficient evidence to establish that Respondent received more FAP benefits than he was entitled to receive. The Department alleged that Respondent received more FAP benefits than he was entitled to receive because he had two unreported felony drug convictions for offenses occurring after August 22, 1996. An individual who has been convicted of two or more felony drug offenses which occurred after August 22, 1996, is ineligible for FAP benefits. 21 USC 862a and 2017 PA 107, Article X, Part 2, Section 619. Pursuant to the applicable law, it is the offense date that is relevant.

The Department presented sufficient evidence to establish that Respondent was convicted of two felony drug offenses which occurred after August 22, 1996. Respondent pled guilty to offenses in 2008 and in 2012, and the Department obtained reliable information during its investigation that established that the offenses which Respondent was convicted of occurred after August 22, 1996. Respondent did not provide any contradictory information.

All FAP benefits issued to Respondent after the date of his second felony drug conviction, October 24, 2012, were overissued because Respondent was not entitled to any FAP benefits. The Department issued \$1,250.00 in FAP benefits to Respondent from November 2012 September 2016, so Respondent was overissued \$1,250.00 in FAP benefits.

The Department requested an overissuance of \$3,650.00 for FAP benefits issued from October 2011 through September 2016. The Department is not entitled to recoup the benefits that were issued to Respondent prior to the date of his second felony drug conviction because an individual is only ineligible once he has been convicted (once an individual has been convicted the offense date is only used to determine if the conviction should be used for disqualification). Since Respondent's second felony drug conviction was not until October 2012, the Department is only entitled to recoup the FAP benefits issued thereafter.

### **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 failed to completely and truthfully answer all questions on his redeterminations. In an application, the Department asked Respondent if he had been convicted of a drug felony and Respondent answered “No” when in fact he had two such convictions. Respondent intentionally misrepresented information to the Department to obtain benefits because he withheld information about his felony drug convictions when he knew or should have known that the Department would consider the information in determining his eligibility for benefits. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his 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 the Program: (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.

### **DECISION AND ORDER**

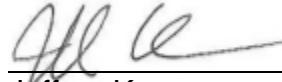
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of FAP benefits in the amount of \$1,250.00 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 the Food Assistance Program (FAP).

IT IS ORDERED that the Department may initiate recoupment procedures for the amount of \$1,250.00 in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall be disqualified from the Food Assistance Program (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**

Amber Gibson  
5303 South Cedar  
PO BOX 30088  
Lansing, MI  
48911

Ingham 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]