



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: September 6, 2019  
MOAHR Docket No.: 19-003889  
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 September 5, 2019, from Lansing, Michigan. The Department was represented by Chris Tetloff, 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 81-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] 2017, Respondent applied for assistance from the Department, including FAP benefits. In the application, Respondent asserted that she did not

have any income from employment. The Department instructed Respondent to report all changes which could affect her eligibility for assistance, including changes in employment, to the Department within 10 days of the date of the change.

2. Respondent did not have any apparent physical or mental impairment that would limit her understanding or her ability to fulfill her responsibilities to the Department.
3. On April 13, 2017, Respondent advised the Department that her son, [REDACTED] moved into her household about two months prior. The Department added Respondent's son as a group member.
4. On [REDACTED] 2017, Respondent began employment with [REDACTED].
5. Respondent did not report her employment to the Department.
6. The Department continued to issue FAP benefits to Respondent without budgeting her income from employment.
7. On July 25, 2017, Respondent's son, [REDACTED] renewed his driver license and used an address that was different than Respondent's. Respondent's son used the address of [REDACTED], [REDACTED] and Respondent's address was [REDACTED].
8. On August 21, 2017, Respondent's son, [REDACTED] began employment at [REDACTED] in [REDACTED] and he used an address that was different than Respondent's when he provided [REDACTED] with his address. Respondent's son used the address of [REDACTED] and Respondent's address was [REDACTED].
9. Respondent did not report that her son moved out of her house to the Department.
10. The Department continued to issue FAP benefits to Respondent as if her son should have been included in her group.
11. The Department investigated Respondent's case and determined that Respondent was overissued FAP benefits because she had unreported income and because she had an unreported loss of a group member.
12. The Department attempted to contact Respondent to discuss her unreported income and her unreported loss of a group member. The Department was unable to contact her, and Respondent did not contact the Department.
13. On April 5, 2019, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.

14. The OIG requested Respondent be disqualified from FAP for 12 months for a first IPV. The OIG requested recoupment of \$2,110.00 in FAP benefits issued from July 2017 through March 2018.
15. 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.

In this case, Respondent received more benefits than she was entitled to receive because she had unreported income and she had an unreported loss of a group member. The Department determines a client's monthly FAP benefit amount by determining the client's group size and countable household income and then looking that information up in its applicable Food Issuance Table. BEM 212 (July 1, 2019), BEM 213 (January 1, 2019), BEM 550 (January 1, 2017), BEM 554 (April 1, 2019), BEM 556 (July 1, 2019), and RFT 260 (October 1, 2018). In general, an increase income causes a decrease in FAP benefits, and a loss of a group member causes a decrease in FAP benefits.

Respondent had an increase in income because she obtained employment and began earning income from her employment. Respondent did not report her change to the Department, which caused the Department to continue issuing her FAP benefits without budgeting her income. This caused the Department to issue Respondent more FAP benefits than what she was eligible to receive.

Respondent also had a loss of a group member because her son was included in her group and he moved out of her house. Respondent's group size should have only been one once her son moved out of her house. Respondent did not report her change to the Department, which caused the Department to continue issuing her FAP benefits based on a group size of two. This caused the Department to issue Respondent more FAP benefits than what she was eligible to receive.

The Department presented sufficient evidence to establish that Respondent was overissued FAP benefits from July 2017 through March 2018 in the total amount of \$2,110.00.

### **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 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 income and household composition. Respondent failed to report that she obtained employment within 10 days of the date of the change, and Respondent failed to report that her son moved out of her house within 10 days of the date of the change. Respondent’s failure to report these changes to the Department must be considered an intentional misrepresentation to obtain benefits from the Department since Respondent knew or should have known that she was required to report them to the Department and that doing so would have caused her benefits to be denied or reduced. 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 \$2,110.00 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 \$2,110.00 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**

Kathleen Verdoni  
411 East Genesee  
PO Box 5070  
Saginaw, MI  
48607

Saginaw County DHHS- via electronic  
mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

**Petitioner**

OIG  
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Lansing, MI  
48909-7562

**Respondent**

[REDACTED]  
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