



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: June 25, 2019
MOAHR Docket No.: 19-004418
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [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 June 19, 2019, from Lansing, Michigan. The Department was represented by Ryan Sevenski, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] [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 111-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 June 5, 2007, [REDACTED] [REDACTED] pled guilty to a controlled substance felony in the Thirtieth Judicial Circuit Court.

2. On November 3, 2008, [REDACTED] [REDACTED] [REDACTED] pled guilty to a controlled substance felony in the Thirtieth Judicial Circuit Court.
3. On [REDACTED] [REDACTED] 2017, Respondent applied for assistance from the Department, including FAP benefits. In the application, Respondent represented that [REDACTED] [REDACTED] was her spouse. Respondent answered "No" when asked if anyone in her household had been convicted of a drug felony, and Respondent answered "No" when asked if anyone in her household had been convicted of a drug felony more than once. Respondent signed her application and thereby affirmed that she understood the questions and that she provided true and complete information.
4. Respondent did not have any apparent physical or mental impairment which would have limited her understanding or her ability to answer the questions on her application truthfully and completely.
5. The Department approved Respondent for FAP benefits and included [REDACTED] [REDACTED] as a non-disqualified group member based on the information Respondent provided to the Department.
6. The Department conducted an investigation of Respondent's case and determined that Respondent's spouse had two or more felony drug convictions for offenses occurring after August 22, 1996, which Respondent had not reported on her application. The Department determined that it overissued Respondent FAP benefits as a result because it included her spouse as a group member when he should have been disqualified for his felony drug convictions. The Department determined that Respondent was overissued \$1,224.00 in FAP benefits from December 2017 through August 2018.
7. The Department attempted to contact Respondent to obtain an explanation for her failure to disclose her spouse's felony drug convictions, but the Department was unable to obtain an explanation from Respondent.
8. Respondent had previously been found to have committed an IPV in August 2013.
9. On April 24, 2019, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
10. The OIG requested recoupment of a \$1,224.00 overissuance of FAP benefits issued from [REDACTED] 2017 through [REDACTED] 2018, and the OIG requested that Respondent be disqualified from FAP for 24 months for a second IPV.
11. 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 (January 1, 2018), p. 1.

In this case, the Department did not present sufficient evidence to establish that Respondent received more FAP benefits than she was entitled to receive. The Department alleged that Respondent received more FAP benefits than she was entitled to receive because her spouse had two unreported felony drug convictions for offenses occurring after August 22, 1996, and he was included as a member of Respondent's group. 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 once an individual has been convicted. The Department did not present any reliable evidence to establish the actual date(s) of the felony drug offenses which Respondent's spouse was convicted of. Thus, there is no evidence that the felony drug offenses which Respondent's spouse was convicted of actually occurred after August 22, 1996. Therefore, there is insufficient evidence to establish that Respondent's spouse was ineligible for FAP benefits and should not have been included as a group member.

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 alleged that Respondent withheld information on her application to obtain FAP benefits when she failed to disclose her spouse's felony drug convictions. The Department did not present any evidence to establish that Respondent withheld information about felony drug offenses which could have affected her household's eligibility for FAP benefits. The Department did not establish that Respondent's spouse had been convicted of two or more felony drug offenses which occurred after August 22, 1996, and only those felony drug convictions would have affected her eligibility for FAP benefits.

Further, even if the Department had presented sufficient evidence to establish that Respondent's spouse had been convicted of felony drug offenses which occurred after August 22, 1996, the Department did not present sufficient evidence to establish that Respondent knew or should have known about his convictions. The relevant convictions were from more than 10 years ago, and the Department did not present any evidence that Respondent knew [REDACTED] [REDACTED] when he was convicted. Since there was insufficient evidence that Respondent knew about her spouse's felony drug convictions, there was insufficient evidence to establish that she intended to withhold information about his felony drug convictions.

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, the Department did not establish that Respondent committed an intentional program violation, so Respondent is not disqualified from FAP for an IPV.

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 did not receive an overissuance of FAP benefits.
2. The Department has not established, by clear and convincing evidence, that Respondent committed an IPV.

3. Respondent should not be disqualified from FAP for an IPV.

IT IS SO ORDERED.

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

DHHS

Jessica Kirchmeier
1050 Independence Blvd
Charlotte, MI
48813

Eaton 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]
MI