



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: July 15, 2019
MOAHR Docket No.: 19-004800
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] appeared with her grandson, [REDACTED].

One exhibit was admitted into evidence during the hearing. A 54-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 her application, Respondent asserted that her grandson, [REDACTED] was living in her household.

2. Respondent's grandson, [REDACTED] [REDACTED] [REDACTED] was not living with Respondent at the time she applied for assistance; he was living in Oklahoma with his father.
3. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to provide complete and truthful information.
4. Respondent's grandson, [REDACTED] [REDACTED] [REDACTED] attended school in Oklahoma from August 2016 through June 2017.
5. Respondent's father received FAP benefits in Oklahoma for his son.
6. The Department investigated Respondent's case when it discovered that FAP benefits were issued concurrently for [REDACTED] [REDACTED] [REDACTED]
7. On May 1, 2019, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
8. The OIG requested Respondent be disqualified from FAP for 10 years for the concurrent receipt of assistance for [REDACTED] [REDACTED] [REDACTED]. The OIG requested recoupment of \$973.00 in FAP benefits issued from March 2, through August 31, 2017.

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.

FAP benefits are issued to households based on the number of individuals who live together and prepare food together. BEM 212 (July 1, 2019), p. 1. Here, Respondent asserted that her grandson should be included in her FAP group because he was living with her. However, the Department presented sufficient evidence to establish that her grandson was not living with her when she applied and when she received benefits for him. Since Respondent's grandson was included as a group member and since FAP

benefits were issued for him, Respondent received an overissuance of FAP benefits. The Department presented sufficient evidence to establish that Respondent was overissued \$973.00 in FAP benefits from March 2017 through August 2017.

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 provide complete and truthful information on her application. BAM 105 (January 1, 2019), p. 1. Respondent failed to provide complete and truthful information on her application because she asserted that her grandson, [REDACTED] [REDACTED] [REDACTED] was living in her household when he was not. Respondent’s misrepresentation 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 provide complete and truthful information about who was living in her household and that by asserting her grandson was living with her she would receive increased benefits. 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)(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).

Here, the Department requested that Respondent be disqualified for 10 years for concurrent receipt of benefits. The Department asserted that since benefits were issued for Respondent’s grandson by more than one state at the same time,

Respondent is subject to a 10-year disqualification. The Department's assertion is not supported by policy or law. A 10-year disqualification for concurrent receipt of benefits only applies when an individual has committed an IPV with respect to her identity or place of residence for the purpose of obtaining benefits concurrently. No evidence was presented to establish that Respondent misrepresented her identity or residence to obtain benefits concurrently. Therefore, Respondent is not subject to a 10-year disqualification.

Since Respondent is not subject to a 10-year disqualification, and since there is no evidence that Respondent has ever been found to have committed an IPV related to FAP benefits, Respondent is subject to a 12-month disqualification from FAP for a first 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 received an overissuance of FAP benefits in the amount of \$973.00 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 \$973.00 in accordance with Department policy.

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

JK/nr



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]
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