



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] NE [REDACTED]

Date Mailed: July 1, 2019
MOAHR Docket No.: 19-004903
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [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 27, 2019, from Lansing, Michigan. The Department was represented by Dawn O'Dell, 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 58-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. Respondent received food assistance from Nebraska from March 2017 through February 2018. Respondent also received food assistance from Nebraska in June 2018.

2. On [REDACTED] [REDACTED] 2017, Respondent applied for assistance from the Department, including FAP benefits. In the application, Respondent represented that her residence was in Michigan. The Department instructed Respondent to report all changes which could affect her eligibility for assistance to the Department within 10 days, including changes in address.
3. Respondent did not have any apparent physical or mental impairment that would have limited her understanding or ability to fulfill her reporting requirement.
4. The Department issued FAP benefits to Respondent.
5. Respondent used her FAP benefits exclusively in Michigan through December 2017. Respondent then used her FAP benefits exclusively in Nebraska through August 2018.
6. On [REDACTED] [REDACTED] 2018, Respondent began employment at [REDACTED]. Respondent reported to [REDACTED] that her residence was in Nebraska. Respondent worked for [REDACTED] through [REDACTED], 2018.
7. Respondent did not report to the Department that she had moved.
8. The Department investigated Respondent's case and determined that she was issued FAP benefits concurrently by the Department and Nebraska.
9. The Department attempted to contact Respondent to obtain an explanation for her concurrent receipt of benefits, but Respondent did not respond to the Department's attempts.
10. On May 16, 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.
11. 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 \$1,074.85 for the value of benefits overissued.
12. 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.

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 she lives in Michigan for any purpose other than a vacation, regardless of whether she 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 alleged that Respondent was overissued FAP benefits by the Department from November 2017 to December 2017, March 2018 to May 2018, and July 2018. The Department did not present sufficient evidence to support its allegation.

The Department alleged that Respondent was overissued FAP benefits from November 2017 to December 2017 because she was not living in Michigan and therefore ineligible for benefits from the Department. However, the Department did not present sufficient evidence to prove that Respondent was not living in Michigan from November 2017 to December 2017. The evidence presented established that Respondent was in Michigan and using her FAP benefits exclusively in Michigan from November 2017 to December 2017. Thus, the evidence tends to show that Respondent was in fact in Michigan from November 2017 to December 2017. Therefore, there is insufficient evidence to establish that Respondent was not entitled to receive the benefits issued to her by the Department from November 2017 to December 2017.

The Department did present sufficient evidence to establish that Respondent was overissued FAP benefits by the Department from March 2018 to May 2018 and in July 2018. Respondent was living in Nebraska during this timeframe as evidenced by her employment record showing she began employment in Nebraska in April 2018 and her FAP benefit usage showing that she was using her benefits exclusively in Nebraska

starting January 2018. The Department presented sufficient evidence to establish that Respondent was overissued \$767.85.

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 address and moves. Respondent failed to report that she moved to Nebraska within 10 days of the date she moved. Respondent did not provide any explanation for her inaction. Respondent’s failure to report this change to the Department 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 report the change to the Department and that reporting the change to the Department would have caused her benefits to cease. 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).

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.

The Department requested that Respondent be disqualified for 10 years for misrepresenting her place of residence to obtain concurrent benefits, but the Department did not present sufficient evidence to establish that Respondent committed such a misrepresentation. The Department alleged that Respondent misrepresented her residence to the Department to obtain concurrent benefits from the Department and Nebraska from November 2017 to December 2017. However, as stated in the overissuance section, the Department did not present sufficient evidence to establish that Respondent was not a resident of Michigan and therefore not entitled to receive benefits from the Department for November 2017 to December 2017. Thus, based on the evidence presented, Respondent did not make a misrepresentation of her place of residence to the Department.

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 \$767.85 in FAP benefits 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 \$767.85 in FAP benefits 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

