



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], AZ [REDACTED]

Date Mailed: September 19, 2019
MOAHR Docket No.: 19-005443
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 September 18, 2019, from Lansing, Michigan. The Department was represented by Taylor Jenkins, 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 74-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] [REDACTED] 2018, Respondent applied for assistance from Arizona.

2. On [REDACTED] [REDACTED] 2018, Respondent applied for assistance from the Department, including FAP benefits. In the application, Respondent represented that nobody in his household had received food assistance from another state within the past 30 days.
3. On [REDACTED] [REDACTED] 2018, Respondent applied for assistance from the Department, including FAP benefits. In the application, Respondent represented that nobody in his household had received food assistance from another state within the past 30 days.
4. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to provide complete and truthful information.
5. On December 6, 2018, the Department issued a notice of case action to Respondent to notify him that he was eligible FAP benefits from the Department effective November 28, 2018.
6. The Department issued FAP benefits to Respondent beginning November 28, 2018.
7. The Department discovered that Respondent was receiving assistance from Arizona. Arizona had been issuing Respondent food assistance benefits to Respondent since [REDACTED] 2018.
8. On March 25, 2019, the Department issued an out of state benefit match notice which notified Respondent that the Department received information that showed he received assistance from Arizona and the Department in March. The Department instructed Respondent to complete a form and return it to the Department.
9. Respondent did not return the out of state benefit form.
10. The Department closed Respondent's FAP benefits and initiated an investigation of his case.
11. The Department determined that Respondent was overissued FAP benefits because he was receiving benefits from the Department and another state at the same time.
12. The Department attempted to contact Respondent to obtain his explanation for failing to disclose his receipt of assistance from another state, but the Department was unable to obtain an explanation from Respondent.
13. On May 14, 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 \$595.00 in FAP benefits issued from November 2018 through February 2019.
15. A notice of hearing was mailed to Respondent at his last known address and it was 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, the Department alleges that Respondent was overissued FAP benefits because the Department issued him FAP benefits while he was receiving the same from another state. An individual cannot receive FAP benefits from more than one state for the same month. BEM 222 (October 1, 2018), p. 3. The Department presented sufficient evidence to establish that Respondent received FAP benefits which he was not eligible to receive since he was receiving benefits from another state. The amount of the overissuance is \$595.00, the value of the benefits issued to Respondent while he was receiving benefits from another state.

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 completely and truthfully answer all questions on his application. BAM 105 (January 1, 2019), p. 9. Respondent withheld information about his receipt of assistance from Arizona on his application. Respondent's failure to report his receipt of assistance from Arizona must be considered an intentional misrepresentation to obtain benefits from the Department since Respondent knew or should have known that he was required to disclose it to the Department and that doing so would have caused his benefits to be denied. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to provide complete and truthful information.

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

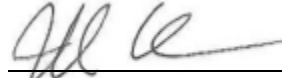
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of FAP benefits in the amount of \$595.00 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 \$595.00 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

DHHS

Fiona Wicks
12185 James St Suite 200
Holland, MI
49424

Ottawa 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]
AZ