



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:  
MOAHR Docket No.: 19-005459  
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 Titles 7 and 42 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16 and 42 CFR 431.230(b). After due notice, a telephone hearing was held on October 17, 2019, from Lansing, Michigan. The Department was represented by Taylor Jenkins, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED], appeared and represented himself.

One exhibit was admitted into evidence during the hearing. A 173-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 Medical Assistance (MA) and 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] 2014, Respondent applied for assistance from the Department, including MA. In the application Respondent submitted, Respondent represented that his household included his son, [REDACTED]. The Department instructed Respondent to report all changes which could affect his eligibility for assistance to the Department within 10 days of the date of the change, including anyone moving in or out of the household.
2. On [REDACTED] [REDACTED] 2016, Respondent completed a redetermination to certify his eligibility for assistance. In the redetermination, Respondent represented that nobody had moved out of his household.
3. On [REDACTED], 2016, Respondent's son, [REDACTED], enlisted in the [REDACTED] [REDACTED] moved out of Respondent's household and Michigan when he enlisted in the [REDACTED]
4. Respondent did not report to the Department that his son moved out of his household.
5. The Department continued to issue FAP benefits and MA to Respondent's household as if [REDACTED] was still living in the household.
6. On December 15, 2016, Respondent completed a semi-annual report to certify his eligibility for assistance. In the report, Respondent represented that nobody had moved out of his household.
7. On February 7, 2017, the Department issued a notice of case action to Respondent to notify him that his household was eligible for a \$516.00 monthly FAP benefit beginning April 1, 2016, based on a household size of five, which included [REDACTED]
8. On May 23, 2017, the Department issued a health care coverage determination notice to Respondent to notify him that his son, [REDACTED] was eligible for emergency services only (ESO) MA beginning July 1, 2017.
9. On June 27, 2017, the Department issued a notice of case action to Respondent to notify him that his household was eligible for a \$519.00 monthly FAP benefit beginning July 1, 2017, based on a household size of five, which included [REDACTED]
10. On June 27, 2017, the Department issued a health care coverage determination notice to Respondent to notify him that his son, [REDACTED] was eligible for full-

coverage MA from September 2016 through January 2017 and February 1, 2017, and continuing thereafter.

11. On June 30, 2017, Respondent completed a redetermination to certify his eligibility for assistance. In the redetermination, Respondent represented that nobody had moved out of his household.
12. On August 1, 2017, the Department issued a notice of case action to Respondent to notify him that his household was eligible for a \$738.00 monthly FAP benefit beginning August 1, 2017, based on a household size of six, which included [REDACTED]
13. On August 1, 2017, the Department issued a health care coverage determination notice to Respondent to notify him that his son, [REDACTED] was eligible for full-coverage MA beginning August 1, 2017, and continuing thereafter.
14. On September 9, 2017, the Department issued a notice of case action to Respondent to notify him that his household was eligible for a \$734.00 monthly FAP benefit beginning October 1, 2017, based on a household size of six, which included [REDACTED]
15. On October 25, 2017, the Department issued a notice of case action to Respondent to notify him that his household was eligible for a \$444.00 monthly FAP benefit beginning November 1, 2017, based on a household size of four, which included [REDACTED]
16. On December 11, 2017, Respondent completed a semi-annual contact report in which he represented that his son, [REDACTED] was a member of his household.
17. On January 9, 2018, the Department issued a notice of case action to Respondent to notify him that his household was eligible for a \$444.00 monthly FAP benefit beginning November 1, 2017, based on a household size of four, which included [REDACTED]
18. Respondent's son, [REDACTED] was not living in Respondent's household or Michigan during his enlistment in the Marines from September 6, 2016, to February 28, 2018.
19. The Department investigated Respondent's case and determined that Respondent was overissued FAP benefits and MA because Respondent failed to report that a group member moved out the household, and the Department continued to issue FAP benefits and MA to Respondent's household as if nobody had moved out.
20. The Department attempted to contact Respondent, but the Department was unable to obtain an explanation from Respondent.

21. On May 15, 2019, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
22. The OIG requested Respondent be disqualified from FAP for 12 months for a first IPV. The OIG requested recoupment of \$2,922.79 in MA benefits and \$1,944.00 in FAP benefits for benefits issued from November 2016 through February 2018.

### **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department administers the MA program pursuant to 42 CFR 435, MCL 400.10 and MCL 400.105-.112k.

#### **Overissuance**

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (January 1, 2018), p.1. When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. *Id.* at 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. *Id.* at 1. For MA, an individual is a resident if she lives in Michigan except for a temporary absence. *Id.* at 2.

The Department established that Respondent was overissued FAP and MA. The Department presented sufficient evidence to establish that Respondent's son, [REDACTED] was not living in Respondent's household or Michigan during the time that the Department issued FAP benefits and MA to the household on [REDACTED] behalf. Since [REDACTED] was not living in Respondent's household or Michigan when the benefits were issued on his behalf, all the benefits issued on [REDACTED] behalf were overissued. The Department presented sufficient evidence to establish that it issued Respondent

\$1,944.00 in FAP benefits and \$2,922.79 in MA for benefits issued from November 2016 through February 2018.

### **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 when anyone moved out of his household to the Department within 10 days of the change. 7 CFR 273.12(a)(2). The Department clearly and correctly instructed Respondent to report these changes to the Department within 10 days. Respondent failed to report that his son, [REDACTED] moved out of his household within 10 days of the date he enlisted in the [REDACTED] and moved out. 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 he was required to report the change to the Department and that reporting the change to the Department would have caused his benefits to be reduced. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his 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.

**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 \$1,944.00 in FAP benefits and \$2,922.79 in MA from November 2016 through February 2018 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 \$1,944.00 in FAP benefits and \$2,922.79 in MA in accordance with Department policy.

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

JK/ml



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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

**Petitioner**

OIG – Via Electronic Mail  
PO Box 30062  
Lansing, MI  
48909-7562

**DHHS**

Tara Roland 82-17  
8655 Greenfield  
Detroit, MI  
48228

Wayne-District 17 – Via Electronic Mail

Recoupment – Via Electronic Mail

L. Bengel – Via Electronic Mail

**Respondent**

[REDACTED] – Via First Class Mail

[REDACTED], MI