



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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Date Mailed: November 6, 2019  
MOAHR Docket No.: 19-008124  
Agency No.: ██████████  
Petitioner: OIG  
Respondent: ██████████

**ADMINISTRATIVE LAW JUDGE: John Markey**

**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, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on November 4, 2019, from Detroit, Michigan. The Department was represented by ██████████ Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear at the hearing. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e). During the hearing, a 139-page packet of documents was offered and admitted as into evidence as Exhibit A, pp. 1-139.

**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) with respect to FAP?
3. Should Respondent be disqualified from receiving FAP benefits?

**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 or about October 25, 2015, Respondent began working for ██████████ ██████████. Respondent worked for and received wages from ██████████ consistently from that date until about February 14, 2017. Exhibit A, pp. 67-100.

2. On [REDACTED], 2015, Respondent submitted to the Department an application for FAP benefits. Exhibit A, pp. 11-36.
3. On the application, Respondent dishonestly indicated that he had no income or employment at the time of application. Exhibit A, pp. 15-16.
4. Respondent signed the application, thereby certifying that all of the information was truthful. Exhibit A, p. 18.
5. On December 19, 2016, Respondent submitted another application for FAP benefits. Exhibit A, pp. 37-66.
6. On the application, Respondent indicated that he had a job where he was paid in-kind as opposed to cash working for [REDACTED]. He indicated that the value of the in-kind income was \$500. In reality, Respondent was working full-time and at a rate of pay of \$17 per hour or more for [REDACTED]. Exhibit A, pp. 43; 67-100.
7. Respondent was approved for FAP benefits based on the information Respondent provided. From November 4, 2015 through February 28, 2017, Respondent received FAP benefits that were calculated without respect to his hidden income from [REDACTED]. Exhibit A, pp. 101-106; 109-139.
8. On June 28, 2019, the Department's OIG filed a hearing request to establish an IPV with respect to FAP. The Department's OIG requested that Respondent be disqualified from receiving FAP benefits for one year for a first alleged IPV. The Department considers the alleged fraud period to be November 4, 2015 through February 28, 2017. The Department is seeking to establish a \$2,773 overissuance of FAP benefits received during the fraud period. Exhibit A, pp. 1-8, 109-139.
9. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Service as undeliverable.
10. Respondent did not have any apparent mental or physical impairment that would limit his understanding or ability to fulfill his reporting requirements.

### **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) [formerly known as the Food Stamp Program] 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 (formerly known as the Department of Human Services) 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 Department's position is that Respondent committed an IPV with respect to FAP by misrepresenting his employment and income on the two FAP applications. The Department contends that the misrepresentation led the Department to overissue to Respondent \$2,773 in FAP benefits for the period from November 4, 2015 through February 28, 2017.

### **Overissuance**

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (October 2015), p. 1; 7 CFR 273.18. When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1; 7 CFR 273.18.

In this case, Respondent received more benefits than he was entitled to receive. The Department determined Respondent's eligibility without budgeting Respondent's concealed income from his employment with LWA, which caused Respondent's household income to be understated. Properly factoring into the equation the household's unreported income reduced the amount of FAP benefits that Respondent was eligible to receive. The Department established that Respondent was not entitled to any FAP benefits from November 4, 2015 through February 28, 2017. The Department issued to Respondent a total of \$2,773 in FAP benefits during that period. Thus, the Department has shown that it overissued \$2,773 of FAP benefits from November 4, 2015 through February 28, 2017.

### **Intentional Program Violation**

The Department's policy in effect at the time of Respondent's alleged IPV defined an IPV as an overissuance in which the following three conditions exist: (1) the client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination; (2) the client was clearly and correctly instructed regarding his or her reporting responsibilities; and (3) the client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill his or her reporting responsibilities. BAM 720 (October 2015), p. 1; 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. BAM 720, page 1; see also 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, the Department has met its burden. Respondent was required to completely and truthfully answer all questions in forms and in interviews. BAM 105 (July 2015), p. 8. On [REDACTED], 2015, Respondent submitted an application for FAP benefits to the Department. On the employment section of the application, Respondent was asked whether anyone in the household had any income from employment or otherwise. Respondent indicated that nobody in his household had any income. No mention was made of the fact that he had obtained employment just one week earlier and was working and earning wages on a regular consistent basis. About one year later, Respondent filed another FAP application wherein he once again lied about his employment and income status. Thus, Respondent affirmatively misrepresented his household's income and employment status when filing the FAP applications with the Department.

Respondent's dishonest and misleading statements to the Department regarding his household's income must be considered an intentional misrepresentation to maintain his FAP benefits since Respondent knew or should have known that he was required to report the income to the Department and that reporting the income to the Department would have caused the Department to recalculate and reduce his FAP benefits. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his reporting requirement. The Department has proven by clear and convincing evidence that Respondent committed an intentional program violation.

### **Disqualification**

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, pp. 15-16; 7 CFR 273.16(b). In general, clients are disqualified for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16.

In this case, there is no indication in the record that Respondent was previously 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 one-year disqualification from receiving FAP benefits.

### **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. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to his FAP benefits.

2. The Department has established by clear and convincing evidence that Respondent received an overissuance of FAP benefits in the amount of \$2,773 that the Department is entitled to recoup and/or collect.
3. Respondent is subject to a one-year disqualification from receiving FAP benefits.

IT IS ORDERED that the Department shall initiate recoupment/collection procedures for the amount of \$2,773 in accordance with Department policy, less any amounts already recouped or collected.

IT IS FURTHER ORDERED that Respondent shall be disqualified from receiving FAP benefits for a period of one year.

JM/tm



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**John Markey**  
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

**DHHS**

Tara Roland 82-17  
8655 Greenfield  
Detroit, MI  
48228

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

cc: IPV-Recoupment Mailbox  
L. Bengel