



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: September 19, 2019  
MOAHR Docket No.: 19-008150  
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 September 18, 2019, from Lansing, Michigan. The Department was represented by Taylor Jenkins, 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 149-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

### **ISSUES**

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from the Food Assistance Program (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] 2018, Respondent applied for assistance from the Department, including FAP benefits. In the application, Respondent represented that her spouse was not living in her household.

2. Respondent did not have any apparent physical or mental impairment that would limit her understanding or her ability to provide complete and truthful information.
3. On May 3, 2018, the Department interviewed Respondent. During the interview, Respondent again represented that her spouse was not living in her household.
4. On May 3, 2018, the Department issued a notice of case action to Respondent to notify her that she was approved for FAP benefits. The Department notified Respondent that her household would receive \$760.00 per month based on a reported income of \$[REDACTED]. The Department instructed Respondent to report all changes which could affect her eligibility for assistance to the Department within 10 days of the date of the change.
5. On May 8, 2018, the Department issued a notice of case action to Respondent to notify her that one of her household members was disqualified from receiving benefits and that her household would receive \$640.00 per month based on a reported income of \$[REDACTED].
6. The Department's OIG initiated an investigation of Respondent's case and determined that Respondent withheld information about her spouse living in her household.
7. During the Department's OIG's investigation, the Department's OIG discovered (a) that Respondent's spouse has used the same address as Respondent on all of his employment documents; (b) that Respondent lives in a home that has been leased to Respondent's husband since December 2017, (c) that utilities for Respondent's home have remained in Respondent's spouse's name, and (d) that Respondent's spouse had earnings during the time period that Respondent received FAP benefits based on a reported household income of \$0.00.
8. On August 21, 2018, the Department's OIG visited Respondent's home and witnessed Respondent's spouse in the home. The Department's OIG asked to speak with Respondent's spouse. Respondent told the Department's OIG that he did not live there and then closed the door.
9. On [REDACTED] [REDACTED] 2018, Respondent's spouse submitted an application for health care coverage. He listed the same address used by Respondent as his address. He represented he was married, that he lives with his spouse, and that he will file a joint tax return with his spouse.
10. On July 18, 2019, the Department's OIG filed a hearing request to establish that Respondent committed an IPV. The OIG did not request recoupment because it already established a debt in the amount of the overissuance.
11. The OIG requested Respondent be disqualified from FAP for 12 months for a first IPV.

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).

#### **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 her application. BAM 105 (January 1, 2019), p. 9. Respondent withheld information about her spouse living in her household when she applied for FAP benefits. Respondent’s spouse was living in her household as evidenced by the fact that Respondent’s home address was the only address used by Respondent and the fact that the Department’s OIG witnessed Respondent’s spouse at Respondent’s home.

Respondent’s failure to report that her spouse was living in her household and had earnings must be considered an intentional misrepresentation to obtain benefits from the Department since Respondent knew or should have known that she was required to disclose it to the Department and that doing so would have caused her benefits to be denied or reduced. 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). 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. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.
2. Respondent should be disqualified from FAP.

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

JK/nr



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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

**DHHS**

Fiona Wicks  
12185 James St Suite 200  
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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]  
[REDACTED]  
[REDACTED], MI