



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: February 27, 2020
MOAHR Docket No.: 19-013097
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 Regulations (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on February 26, 2020, from Lansing, Michigan. The Department was represented by Allyson Carneal, Regulation Agent of the Office of Inspector General (OIG). Respondent, Damien Banks, 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 101-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], 2015, Respondent applied for assistance from the Department, including FAP benefits. In the application, Respondent reported that his household did not have any income. The Department instructed Respondent to report any change in household income to the Department within 10 days of the date of the change.

2. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his reporting requirement.
3. On June 5, 2015, the Department mailed a notice of case action to Respondent to notify him that he was approved for a FAP benefit of \$168.00 for June 5, 2015, through June 30, 2015, and \$194.00 per month thereafter. The Department included a budget which showed that it calculated Respondent's FAP benefit amount based on a household size of one and a reported income of \$0.00 per month. The Department again instructed Respondent to report any change in household income to the Department within 10 days of the date of the change.
4. In February 2016, Respondent obtained employment at [REDACTED]. Respondent received weekly paychecks from [REDACTED] from February 19, 2016, through July 15, 2016.
5. Respondent did not report to the Department that he had a change in household income from employment at [REDACTED].
6. The Department continued to issue FAP benefits to Respondent as if his household did not have any income.
7. On August 21, 2017, Respondent obtained employment at [REDACTED]. Respondent received weekly paychecks from [REDACTED] from August 31, 2017, through November 9, 2017.
8. On September 1, 2017, Respondent applied for assistance from the Department again, including FAP benefits. In the application, Respondent reported that his household did not have any income. The Department instructed Respondent to report any change in household income to the Department within 10 days of the date of the change.
9. On September 5, 2017, the Department mailed a notice of case action to Respondent to notify him that he was approved for a FAP benefit of \$194.00 per month effective September 1, 2017, based on a household size of one and a reported income of \$0.00 per month. The Department again instructed Respondent to report any change in household income to the Department within 10 days of the date of the change.
10. On September 18, 2017, the Department mailed a notice of case action to Respondent to notify him that he was approved for a FAP benefit of \$192.00 per month effective October 1, 2017, based on a household size of one and a reported income of \$0.00 per month. The Department again instructed Respondent to report any change in household income to the Department within 10 days of the date of the change.

11. Respondent did not report to the Department that he had a change in household income from employment at Clemens Food Group.
12. The Department continued to issue FAP benefits to Respondent as if his household did not have any income.
13. The Department investigated Respondent's case after it discovered that he had unreported income from employment.
14. The Department determined that Respondent was overissued FAP benefits from April 1, 2016, through May 31, 2016, and from September 1, 2017, through December 31, 2017, because Respondent was issued FAP benefits based on a budgeted household income that did not include his increase in income from his employment at Spherion Staffing and Clemens Food Group.
15. On January 7, 2020, the Department's OIG filed a hearing request to establish that Respondent committed an IPV when he failed to report his household income to the Department.
16. The OIG requested Respondent be disqualified from FAP for 12 months for a first IPV.
17. A notice of hearing was mailed to Respondent at his 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. In 2016, Respondent failed to report a change in household income after the Department instructed him to do so. Respondent was required to report changes in his 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 in his household income to the Department within 10 days. Respondent failed to report that he obtained employment within 10 days of the date of the change. Respondent did not provide any explanation for his 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 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.

In 2017, Respondent failed to completely and truthfully answer all questions on his application when he omitted information about his employment at Clemens Food Group. Respondent was required to completely and truthfully answer all questions on his application. BAM 105 (October 1, 2019), p. 9. Respondent withheld information about his employment on his application. Respondent's failure to report his employment to the Department 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 his employment to the Department and that doing so would have caused his benefits to be denied or reduced. 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. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.
2. Respondent should be disqualified from FAP for 12 months.

IT IS SO ORDERED.

JK/ml



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

Calhoun (District 21) County DHHS – Via
Electronic Mail

Recoupment – Via Electronic Mail

L. Bengel – Via Electronic Mail

Petitioner

OIG – Via Electronic Mail

Respondent

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]