



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED], NV [REDACTED]

Date Mailed: February 3, 2020  
MOAHR Docket No.: 19-013152  
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 Regulations (CFR), particularly 7 CFR 273.16 and 42 CFR 431.230(b). After due notice, a telephone hearing was held on January 30, 2020, from Lansing, Michigan. The Department was represented by Patrick Cousineau, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED], did not appear. The hearing was held in Respondent's absence.

One exhibit was admitted into evidence during the hearing. A 47-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], 2018, Respondent applied for assistance from the Department, including MA and FAP benefits. Respondent asserted in her application that she

lived in Michigan and that she was not homeless. The Department instructed Respondent to report all changes to the Department which could affect her eligibility for assistance, including changes in address. Respondent signed her application and thereby acknowledged her reporting responsibility.

2. Respondent did not have any apparent physical or mental impairment that would limit her understanding or her ability to fulfill her reporting responsibility.
3. On June 13, 2018, the Department mailed a health care coverage determination notice to Respondent to notify her that she and [REDACTED] were eligible for full-coverage MA effective June 1, 2018. The Department again instructed Respondent to report all changes to the Department which could affect her eligibility for assistance, including changes in address.
4. On July 6, 2018, the Department mailed a notice of case action to Respondent to notify her that she was eligible for FAP benefits effective June 13, 2018. The Department again instructed Respondent to report all changes to the Department which could affect her eligibility for assistance, including changes in address.
5. On November 24, 2018, Respondent began using her FAP benefits to complete electronic benefit transfer (EBT) transactions exclusively in Nevada.
6. On April 7, 2019, Respondent reported a change to the Department. Respondent reported that she had moved to [REDACTED], Nevada, on November 28, 2018.
7. The Department investigated Respondent's case and determined that she was overissued MA and FAP benefits because she was issued benefits after she moved out of state. The Department determined that benefits were overissued in January 2019, and the Department determined that the overissuance was \$279.00 for MA and \$353.00 for FAP benefits.
8. The Department attempted to contact Respondent to discuss the circumstances surrounding her late change report, but the Department was unable to obtain an explanation from Respondent.
9. On December 4, 2019, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
10. The OIG requested Respondent be disqualified from FAP for 12 months for a first IPV. The OIG requested recoupment of \$279.00 in MA benefits and \$353.00 in FAP benefits.
11. 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**

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 (October 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 (January 1, 2020), p. 1. For MA, an individual is a resident if she lives in Michigan except for a temporary absence. *Id.* at 2. 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. An individual cannot receive FAP benefits from more than one state for the same month. BEM 222 (October 1, 2018), p. 3.

The Department established that Respondent was overissued MA and FAP. The Department presented sufficient evidence to establish that Respondent was not living in Michigan during the time that she was receiving benefits from the Department. Respondent did not provide any evidence to the contrary since Respondent did not appear. Thus, I must find that Respondent was not a resident of Michigan and was not eligible for benefits from the Department. The Department presented sufficient evidence to establish that it overissued Respondent \$279.00 in MA benefits and \$353.00 in FAP benefits in January 2019.

### **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 changes in her 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 to the Department within 10 days, including changes in her address. Respondent failed to report that her address changed within 10 days of the date she moved to Nevada. Respondent did not provide any explanation for her inaction. Respondent’s failure to timely 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 she was required to report the change to the Department and that reporting the change to the Department would have caused her benefits to cease. 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)(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.

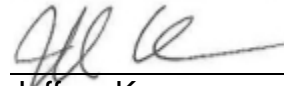
**DECISION AND ORDER**

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 \$279.00 in MA benefits and \$353.00 in FAP benefits for January 2019 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 for 12 months.

IT IS SO ORDERED.

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

**DHHS**

Denise McCoggle  
27260 Plymouth Rd.  
Redford, MI 48239

Wayne (District 15) County DHHS – Via  
Electronic Mail

MDHHS Recoupment – Via Electronic  
Mail

L. Bengel – Via Electronic Mail

**Petitioner**

OIG – Via Electronic Mail  
P.O. Box 30062  
Lansing, MI 48909-7562

**Respondent**

[REDACTED]  
[REDACTED], NV [REDACTED]