



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: August 26, 2019  
MOAHR Docket No.: 19-004417  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**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 August 19, 2019, from Detroit, Michigan. The Department was represented by Thomas Malik, 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, 130 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-130.

### **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 February 22, 2016, Respondent submitted to the Department an application for FAP benefits for a household that purportedly only included herself. Exhibit A, pp. 13-42.
2. Respondent signed the application, thereby certifying that all of the information was truthful. Exhibit A, p. 24.
3. On September 6, 2016, Respondent gave birth to her son, [REDACTED]. Listed as the father of the child was [REDACTED]. Exhibit A, p. 106.
4. On September 20, 2016, Respondent submitted to the Department an application for Medicaid (MA) benefits for her newborn son. In the application, Respondent indicated that the household consisted of just herself and her newborn son. Exhibit A, pp. 43-69.
5. Respondent signed the application, thereby certifying that all information contained therein was truthful. Exhibit A, pp. 51-52.
6. During the entire relevant time period, [REDACTED], the father of [REDACTED], lived with Respondent at her address of record and had substantial earnings from his employment. That conclusion is based on employment records showing his address, Secretary of State records showing his driver's license and vehicles at the address, and real estate documents showing that he lived at the same address where Respondent had her open benefits case. Exhibit A, pp. 70-106.
7. Respondent was approved for FAP benefits based on the information Respondent provided. From November 1, 2016 through August 31, 2017, Respondent received FAP benefits for her household that purportedly included only herself and her newborn son. [REDACTED] income was never factored into the equation because Respondent lied about [REDACTED] presence in the home. Exhibit A, pp. 1-10, 128-130.
8. On April 23, 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 1, 2016 through August 31, 2017. The Department is seeking to establish a \$1,940 overissuance of FAP benefits received during the fraud period. Exhibit A, pp. 1-10, 107-127.
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 her understanding or ability to fulfill her 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 her household makeup, which resulted in a misrepresentation of household employment and income on the September 20, 2016 application. The Department contends that the misrepresentation led the Department to overissue to Respondent \$1,940 in FAP benefits for the period from November 1, 2016 through August 31, 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 (January 2016), 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. In this case, Respondent received more benefits than she was entitled to receive. Parents and their children under age 22 who live together must be in the same group. BEM 212 (October 2015), p. 1. On September 6, 2016, Respondent and [REDACTED] had a baby, who came home to live with both of the two parents. From then forward, the three of them lived together in the same household.

However, because Respondent repeatedly lied about [REDACTED] status as a household member, the Department did not include him in the FAP group. The Department determined Respondent's eligibility without budgeting [REDACTED] concealed income from his employment, 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 received \$1,940 in FAP benefits but was not entitled to receive any FAP benefits during the alleged fraud period. Thus, the Department has shown that it overissued \$1,940 of FAP benefits from November 1, 2016 through August 31, 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 (January 2016), 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 (April 2016), p. 9. On September 20, 2016, Respondent submitted an application for benefits to the Department. On the application, Respondent lied about her household makeup and income by certifying that she and her newborn son were the only two people in the household. Respondent knew that [REDACTED] lived in the household and in all likelihood knew that he was working and bringing in income to the household. Thus, Respondent affirmatively misrepresented her household's makeup and income when filing the application with the Department.

Respondent's dishonest and misleading statements to the Department regarding her household must be considered an intentional misrepresentation to maintain her FAP benefits since Respondent knew or should have known that she was required to report the [REDACTED] income and inclusion in the household to the Department and that reporting the income to the Department would have caused the Department to recalculate and reduce her FAP benefits. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her 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 her FAP benefits.
2. The Department has established by clear and convincing evidence that Respondent received an overissuance of FAP benefits in the amount of \$1,940 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 \$1,940 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/cg

  
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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

**Via Email:**

MDHHS-Washtenaw-Hearings  
OIG Hearings  
Recoupment  
MOAHR

**Respondent – Via First-Class Mail:**

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