



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: October 3, 2019  
MOAHR Docket No.: 19-005716  
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 September 30, 2019 from Detroit, Michigan. The Department was represented by Adriane Laugavitz, Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and represented himself. During the hearing, a 55-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-55.

### **ISSUES**

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) with respect to the Food Assistance Program (FAP)?
2. 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 November 27, 2015, Respondent submitted to the Department an application for FAP benefits. Exhibit A, pp. 10-35.
2. Respondent reported on the application that his household had no income and that he had been laid off a couple of weeks prior to the application date. Exhibit A, p. 14.

3. Respondent signed the application, thereby certifying that all information contained in the application was true to the best of his knowledge. Respondent's signature further certified that he received, read, and understood the information contained in a pamphlet titled "Things You Must Do." The Things You Must Do pamphlet informed Respondent that he had to report changes in income within ten days of receiving a first paycheck and that failure to do so would potentially result in fraud charges being assessed against him. Exhibit A, pp. 17-18.
4. Respondent was approved for benefits and began receiving maximum monthly FAP benefits from the Department for his group size.
5. In October 2016, Respondent began working for [REDACTED], also known as [REDACTED]. On October 6, 2016, Respondent received his first paycheck from his employment. Between that date and the end of May 2017, Respondent was continuously employed and earning wages at [REDACTED], although his earnings varied from week to week. Exhibit A, pp. 36-39.
6. Respondent never reported his income or employment with [REDACTED] to the Department.
7. Because the Department was unaware of the new income, the Department continued to issue to Respondent the maximum monthly FAP benefits. From December 1, 2016 through May 31, 2017, the Department issued to Respondent \$1,164 in FAP benefits. The Department believes that Respondent was only entitled to \$357 in FAP benefits during that period. Exhibit A, pp. 42-55.
8. On May 22, 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 December 1, 2016 through May 31, 2017. During the fraud period, the Department issued to Respondent \$1,164 in FAP benefits. Prior to the hearing in this matter, the Department already established that Respondent received an overissuance of FAP benefits in the amount of \$807. Exhibit A, pp. 1-8; 42-55.
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 failing to report a change in income leading to the overissuance of FAP benefits. The Department contends that the material omission led the Department to overissue to Respondent \$807 in FAP benefits for the period from December 1, 2016 through May 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. The Department determined Respondent's eligibility without budgeting Respondent's concealed income from his employment with [REDACTED], which caused Respondent's household income to be understated. Properly factoring into the equation the household's unreported income rendered Respondent eligible for a much lower amount of FAP benefits. Prior to the hearing, the Department had already established that Respondent received an \$807 overissuance of FAP benefits from December 1, 2016 through May 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 report changes in his household's circumstances to the Department within 10 days of the date of the change. BAM 105 (April 2014), pp. 11-12; 7 CFR 273.12(a)(1)-(2). The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days.

Starting in October 2016 and continuing through at least the end of the fraud period, Respondent received income on at least one day per week. Respondent failed to report that he became employed or had any new income despite him continuously working and receiving paychecks from October 6, 2016 through at least the end of the fraud period.

Respondent's failure to report the income or employment change to the Department must be considered an intentional omission to maintain his benefits 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 the Department to recalculate and reduce his benefits. It is clear that Respondent knew of the reporting and disclosure requirements and had an intent to deceive the Department regarding his income in order to maximize his benefits. 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.

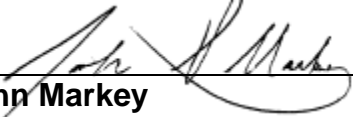
### **DECISION AND ORDER**

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. Respondent is subject to a one-year disqualification from receiving FAP benefits.

IT IS 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

