



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 5, 2019  
MOAHR Docket No.: 19-005744  
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 August 29, 2019, from Lansing, Michigan. The Department was represented by Jenna McClellan, Regulation Agent of the Office of Inspector General (OIG). Respondent, George Fuller, 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 62-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 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 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 [REDACTED] [REDACTED] 2016, Respondent applied for assistance from the Department, including FAP benefits. In the application, the Department instructed Respondent

to report all changes to the Department which could affect his eligibility for assistance. The Department instructed Respondent to report these changes to the Department within 10 days of the date of the change.

2. The Department approved Respondent's application for FAP benefits and issued FAP benefits to him effective October 24, 2016. The Department issued Respondent a prorated amount of \$50.00 for October and then \$194.00 per month thereafter.
3. On December 8, 2016, Respondent was taken into custody by the Michigan Department of Corrections. Respondent remained in custody until he was paroled on May 4, 2017.
4. Respondent did not report to the Department that he was incarcerated or that he had moved.
5. The Department continued to issue FAP benefits to Respondent as if he was not incarcerated, and someone used Respondent's electronic benefit transfer (EBT) card to make purchases with Respondent's FAP benefits.
6. The Department investigated Respondent's case and discovered that he continued to receive FAP benefits while incarcerated.
7. On May 29, 2019, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
8. The OIG requested recoupment of a \$582.00 overissuance of FAP benefits for the value of the benefits that were issued to Respondent from February 2017 through April 2017 while he was incarcerated. The OIG requested that Respondent be disqualified from receiving program benefits for 12 months for a first IPV.

### **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).

### **Overissuance**

A recipient claim is an amount owed because of benefits that were overpaid or benefits that were trafficked. 7 CFR 273.18(a)(1). When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 1, 2018), p. 1.

In this case, Respondent received more FAP benefits than he was entitled to receive because Respondent received FAP benefits while he was incarcerated for more than 30 days. Residents of an institution which provides its residents with the majority of their meals are ineligible for FAP benefits. 7 CFR 273.1(b)(7)(vi). An individual who is incarcerated for more than 30 days is ineligible for benefits. BAM 804 (July 1, 2019), p. 1.

Respondent was a resident of an institution which provided him with the majority of his meals because he was incarcerated as of December 8, 2016. Once Respondent had been incarcerated for 30 days, Respondent was ineligible for benefits. Thus, Respondent was not entitled to the benefits that were issued to him after he had been incarcerated for 30 days. Respondent was overissued \$582.00 in FAP benefits from February 2017 through April 2017 because he was issued FAP benefits during those months after he had been incarcerated for more than 30 days.

### **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 either trafficked program benefits or 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 not met its burden. The Department alleged that Respondent committed an IPV when he failed to report to the Department that he was incarcerated. Respondent did not have any obligation to report to the Department that he was incarcerated, so his failure to report his incarceration cannot be considered an intentional misrepresentation.

All of the following changes are required to be reported to the Department within 10 days: (a) changes in unearned income of \$100 or more; (b) changes in source of income, including job changes; (c) changes in household composition; (d) changes in

residence and resulting changes in shelter costs; (e) acquisition of a non-excludable vehicle; (f) changes in liquid assets such as cash, deposits, and investments; (g) changes in child support obligations; and (h) changes in work hours that cause the individual to work less than an average of 20 hours per week. 7 CFR 273.12(a)(2). No other changes are required to be reported. 7 CFR 273.12(a)(7). Incarceration is not a change that is required to be reported. Although a change in residence is required to be reported, incarceration itself does not change an individual's residence or shelter expenses, and the Department did not establish that Respondent's residence or his shelter expenses changed.

### **Disqualification**

In general, individuals found to have committed an intentional Program violation through an administrative disqualification hearing shall be ineligible to participate in the Program: (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, Respondent is not disqualified because he did not commit an IPV.


### **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 FAP benefits in the amount of \$582.00 that the Department is entitled to recoup.
2. The Department has not established, by clear and convincing evidence, that Respondent committed an IPV.
3. Respondent should not be disqualified from receiving FAP benefits.

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$582.00 in accordance with Department policy.

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**

Denise McCoggle  
27260 Plymouth Rd  
Redford, MI  
48239

Wayne 15 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]  
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