



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], MI [REDACTED]

Date Mailed: January 10, 2020
MOAHR Docket No.: 19-009231
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 January 8, 2020, from Lansing, Michigan. The Department was represented by Brent Brown, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED], 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 49-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 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 November 16, 2016, Respondent applied for assistance from the Department, including FAP benefits. In Respondent's application, Respondent represented that she did not have any income from employment.
2. The Department approved Respondent for FAP benefits based on the information she provided in her application.

3. Respondent was not receiving any income from employment at the time of her application.
4. On January 12, 2017, Respondent received a payment from her employer, [REDACTED].
5. Beginning, February 24, 2017, Respondent started receiving regular payments from her employer, [REDACTED].
6. Respondent did not report her change in household income to the Department.
7. The Department continued to issue FAP benefits to Respondent without taking into account her change in income.
8. The Department subsequently discovered that Respondent had a change in household income, and the Department determined that it overissued FAP benefits to Respondent as a result of the change.
9. The Department contacted Respondent to discuss the matter. Respondent was unable to explain why she did not report her change in household income to the Department.
10. On August 26, 2019, the Department's OIG filed a hearing request to establish that Respondent committed an IPV.
11. The OIG requested Respondent be disqualified from FAP for 12 months for a first IPV.
12. 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

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 not met its burden. The Department did not present sufficient evidence to establish that Respondent intentionally withheld or misrepresented information to obtain or increase her benefits. The Department alleged that Respondent intentionally withheld or misrepresented information when she failed to report a change in household income to the Department. However, the Department did not present any evidence to establish that it instructed Respondent such a change to the Department. Thus, the Department did not establish that Respondent knew she was supposed to report her change in household income to the Department. Therefore, even though Respondent failed to report a change in household income, it cannot be considered an intentional program violation because there is no evidence that Respondent knew she was supposed to report such a change to the Department.

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, the Department did not establish that Respondent committed an intentional program violation, so Respondent is not disqualified from FAP.

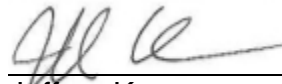
DECISION AND ORDER

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 the Department

has not established, by clear and convincing evidence, that Respondent committed an IPV. Therefore, Respondent is not subject to an IPV disqualification from FAP.

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

Petitioner

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

DHHS

Susan Noel
26355 Michigan Ave.
Inkster, MI 48141

Wayne (District 19) – Via Electronic Mail

Recoupment- Via Electronic Mail

L. Bengel – Via Electronic Mail

Respondent

[REDACTED] – Via First Class
Mail
[REDACTED]
[REDACTED], MI [REDACTED]