



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: January 10, 2020  
MOAHR Docket No.: 19-009440  
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 Regulations (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 58-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 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. As of June 1, 2018, Respondent was receiving FAP benefits from the Department.
2. On June 4, 2018, Respondent applied for FAP benefits from the state of Maryland. In Respondent's application, Respondent asserted that her address was

[REDACTED] Maryland. Respondent also asserted that she was not receiving FAP benefits from another state.

3. Maryland approved Respondent for FAP benefits based on the information she provided in her application.
4. Respondent did not report to the Department that she had moved or that she was receiving FAP benefits from Maryland.
5. Both the Department and Maryland issued FAP benefits to Respondent through November 2018. The Department issued Respondent \$1,762.00 in FAP benefits from July 2018 through November 2018.
6. Respondent used her Maryland FAP benefits to complete electronic benefit transfer (EBT) purchases exclusively in Maryland.
7. The Department discovered that Respondent was receiving concurrent FAP benefits from the Department and Maryland. The Department determined that Respondent was overissued FAP benefits as a result.
8. The Department attempted to contact Respondent to discuss the matter with her, but the Department was unable to get Respondent to engage in a discussion.
9. On August 16, 2019, the Department's OIG filed a hearing request to establish that Respondent committed an IPV and that Respondent owes the Department a debt for benefits overissued.
10. The Department requested Respondent be disqualified from receiving program benefits for 10 years for a first IPV involving the concurrent receipt of benefits, and the Department requested the establishment of a debt of \$1,762.00 for the value of benefits overissued from July 2018 through November 2018.
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**

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 (January 1, 2018), p. 1.

Only a resident of Michigan is eligible for assistance from the Department. BEM 220 (April 1, 2018), p. 1. 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. BEM 220, p. 1. An individual cannot receive FAP benefits from more than one state for the same month. BEM 222 (October 1, 2016), p. 3. A negative action must take effect no later than the month after the change when there is reliable information that a group has left the state. BAM 220 (July 1, 2018), p. 5.

Here, the Department presented sufficient evidence to establish that Respondent was not living in Michigan beginning in June 2018. Respondent was living in Maryland as evidenced by her Maryland assistance application and her EBT purchases. Since Respondent was living in a state other than Michigan, Respondent was not a resident of Michigan. Since Respondent was not a resident of Michigan, Respondent was ineligible for benefits from the Department. Thus, Respondent was not entitled to the benefits she received from the Department while she was living in Maryland. The Department presented sufficient evidence to establish that it overissued \$1,762.00 in FAP benefits to Respondent.

### **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 to the Department that she moved to Maryland. However, the Department did not present any evidence to establish that it instructed Respondent to report a move or change in residence to the Department. Thus, the Department did not establish that Respondent knew she was supposed to report her move or change in residence to the

Department. Therefore, even though Respondent failed to report a move or change in residence, 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)(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, the Department did not establish that Respondent committed an intentional program violation, so Respondent is not disqualified from FAP.

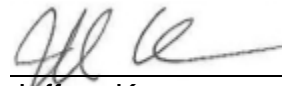
### **DECISION AND ORDER**

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:

1. Respondent received an overissuance of \$1,762.00 in FAP benefits 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 FAP.

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

**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], MI [REDACTED]