



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED], MI [REDACTED]

Date Mailed: September 3, 2020  
MOAHR Docket No.: 20-000610  
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 September 2, 2020. The Department was represented by Karrie Felenchak, 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 48-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. Respondent is a FAP benefit recipient.
2. On July 15, 2018, Respondent completed a redetermination and reported to the Department that he was not employed.

3. On August 3, 2018, Respondent began working [REDACTED].
4. On August 15, 2018, Respondent received his first paycheck from [REDACTED].
5. Respondent did not report his income from [REDACTED] to the Department.
6. Respondent continued to work through [REDACTED] and receive paychecks.
7. On June 2, 2019, Respondent received his last paycheck from [REDACTED].
8. The Department issued FAP benefits to Respondent without budgeting his income from [REDACTED].
9. On August 19, 2019, Respondent completed a redetermination and reported to the Department that he was not employed.
10. The Department investigated Respondent's case and discovered that it overissued FAP benefits to Respondent because he had unreported income.
11. The Department attempted to contact Respondent to get his explanation for his failure to report his employment, but the Department was unable to get a response from Respondent.
12. On January 13, 2020, the Department's OIG requested a hearing to establish that Respondent committed an IPV.
13. The OIG requested that Respondent be disqualified from FAP for 12 months for a first IPV.
14. A notice of hearing was mailed to Respondent at his 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 alleged that Respondent committed an intentional program violation because he failed to report a change in household income as required. Although the Department established that Respondent did not report a change in household income to the Department, the Department did not establish by clear and convincing evidence that Respondent did so intentionally to obtain, maintain, or increase his benefits.

The only evidence related to reporting instructions that the Department presented was a statement contained on a signed redetermination form in which Respondent acknowledged that he could go to a web address to view a publication, *Important Things to Know About Programs & Services*. The Department took the position that Respondent knew or should have known his reporting responsibilities because he acknowledged how to view a publication that contained information about his reporting responsibilities. The problem with the Department’s position is that it operates on the assumption that the publication contained the appropriate reporting instructions. The statement acknowledging how to view the publication is insufficient by itself to establish that Respondent knew his reporting responsibilities.

Respondent could have only intentionally failed to report a change in household income if he knew that he was required to report such a change. Since there is insufficient evidence to establish that Respondent knew his reporting responsibilities, there is insufficient evidence to establish that Respondent knowingly disregarded his reporting responsibilities to obtain, maintain, or increase his benefits.

### **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.

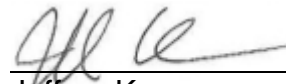
**DECISION AND ORDER**

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:

1. The Department has not established, by clear and convincing evidence, that Respondent committed an IPV.
2. 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

**DHHS**

Denise McCoggle  
Wayne (Dist 15 Greydale) – via electronic  
mail

MDHHS – Recoupment – via electronic  
mail

L. Bengel – via electronic mail

**Petitioner**

MDHHS – OIG – via electronic mail

**Respondent**

[REDACTED]  
MI [REDACTED]