



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: September 4, 2020
MOAHR Docket No.: 20-000611
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 3, 2020. The Department was represented by Scott Matwiejczyk, 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 65-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 [REDACTED] 2017, Respondent applied for FAP benefits from the Department. In the application, the Department instructed Respondent to report changes to the Department within 10 days of the date of the change.

2. On [REDACTED], 2017, Respondent was booked into the [REDACTED] County Jail.
3. Respondent remained incarcerated in the [REDACTED] County Jail through [REDACTED], 2019.
4. Respondent did not report his incarceration to the Department.
5. Respondent continued to receive FAP benefits from the Department while he was incarcerated.
6. The Department investigated Respondent's case and determined that it overissued FAP benefits to Respondent because it issued FAP benefits to him while he was incarcerated.
7. The Department attempted to contact Respondent to discuss his receipt of FAP benefits while he was incarcerated, but the Department was unable to get a response from Respondent.
8. On January 13, 2020, the Department's OIG requested a hearing to establish that Respondent committed an IPV.
9. The OIG requested that Respondent be disqualified from FAP for 24 months for a second IPV.
10. 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 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. However, 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.

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

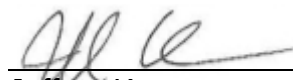
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. 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



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

Jackie Stempel
Muskegon County DHHS – via electronic
mail

MDHHS-Recoupment – via electronic mail

L. Bengel – via electronic mail

Petitioner

MDHHS-OIG – via electronic mail

Respondent

[REDACTED] – via first class mail
[REDACTED], MI [REDACTED]