



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MS [REDACTED]

Date Mailed: December 2, 2019
MOAHR Docket No.: 19-008735
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [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 November 27, 2019, from Lansing, Michigan. The Department was represented by Christopher Fechter, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] [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 50-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. On [REDACTED] [REDACTED] Respondent applied for assistance from the Department, including FAP benefits. In Respondent's application, Respondent asserted that he was homeless and living in Michigan.
2. The Department issued FAP benefits to Respondent.
3. In May 2018, the Department received an alert that Respondent was receiving food assistance concurrently from the Department and another state. The Department investigated and determined that Respondent has been receiving food assistance from Mississippi since he applied for assistance in Mississippi in March 2018.
4. From March 2018 through August 2018, the Department and Mississippi issued FAP benefits to Respondent concurrently. The Department issued Respondent a total of \$1,344.00 worth of FAP benefits.
5. Respondent did not report to the Department that he moved to Mississippi.
6. The Department attempted to contact Respondent to ask him why he did not report to the Department that he had moved to Mississippi, but the Department was unable to obtain an explanation from Respondent.
7. On [REDACTED] [REDACTED] 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 Respondent be disqualified from FAP for 10 years for a first IPV involving the concurrent receipt of benefits. The OIG requested recoupment of \$1,344.00 in FAP benefits issued from March 2018 through August 2018.
9. 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).

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.

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 he lives in Michigan for any purpose other than a vacation, regardless of whether he has an intent to remain permanently. *Id.* at 1.

Here, the Department presented sufficient evidence to establish that Respondent was not living in Michigan beginning in March 2018. Respondent was living in Mississippi as evidenced by his Mississippi assistance application. 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 he received from the Department after he moved to Mississippi. The Department presented sufficient evidence to establish that it overissued \$1,344.00 in FAP benefits to Respondent from March 2018 through August 2018.

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 his benefits. The Department alleged that Respondent intentionally withheld or misrepresented information when he failed to report to the Department that he moved to Mississippi. However, the Department did not present any evidence to establish that it instructed Respondent to report a move or

change in his residence to the Department. Thus, the Department did not establish that Respondent knew he was supposed to report his 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 he 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 FAP benefits in the amount of \$1,344.00 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 FAP.

IT IS SO ORDERED.

JK/nr



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

Gregory Folsom
4809 Clio Road
Flint, MI
48504

Genesee Clio County DHHS- via
electronic mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

Petitioner

OIG
P.O. Box 30062
Lansing, MI
48909-7562

Respondent

 MS