



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: February 3, 2020  
MOAHR Docket No.: 19-010082  
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 30, 2020, from Lansing, Michigan. The Department was represented by Patrick Cousineau, 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 the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from the Food Assistance Program (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 May 4, 2018, the Department mailed a redetermination form to Respondent to obtain information to review his eligibility for FAP benefits. Respondent completed the form and represented that his son, [REDACTED], was living in his home.
2. On June 14, 2018, Arizona began issuing food assistance benefits for [REDACTED] to his mother.

3. On July 2, 2018, the Department mailed a notice of case action to Respondent to notify Respondent that he was eligible for a FAP benefit of \$147.00 per month, effective July 1, 2018, for [REDACTED]. The notice also contained instructions to report all changes which could affect his eligibility for assistance to the Department within 10 days of the date of the change, including changes in the individuals living in the home.
4. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his responsibilities to the Department.
5. On July 21, 2018, the Department mailed a notice of case action to Respondent to notify Respondent that he was eligible for a FAP benefit of \$145.00 per month, effective September 1, 2018, for [REDACTED]. The notice also contained instructions to report all changes which could affect eligibility for assistance to the Department within 10 days of the date of the change, including changes in the individuals living in the home.
6. On August 28, 2018, [REDACTED] in [REDACTED] Arizona, requested school records from [REDACTED] in Michigan. In the request, [REDACTED] indicated that [REDACTED] was enrolling in school at [REDACTED].
7. Respondent did not report to the Department that [REDACTED] left his home. The Department continued to issue FAP benefits to Respondent through May 31, 2019, as if [REDACTED] was still in his home.
8. The Department investigated Respondent's case and determined that Respondent was overissued FAP benefits because it issued FAP benefits to Respondent for [REDACTED] after [REDACTED] had moved out of Respondent's home.
9. The Department attempted to contact Respondent to discuss the circumstances surrounding his failure to report to the Department that Robert Giles had moved out of his home, but the Department was unable to obtain an explanation from Respondent.
10. On September 16, 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 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 met its burden. Respondent was required to report changes in his circumstances to the Department within 10 days of the change. 7 CFR 273.12(a)(2). The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days, including changes in the individuals living in his home. Respondent failed to report that his son moved out within 10 days of the date he moved to Arizona. Respondent did not provide any explanation for his inaction. Respondent’s failure to report this change to the Department must be considered an intentional misrepresentation to maintain or obtain benefits from the Department since Respondent knew or should have known that he was required to report the change to the Department and that reporting the change to the Department would have caused his benefits to cease. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his reporting requirement.

### **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, there is no evidence that Respondent has ever been found to have committed an IPV related to FAP benefits. Thus, this is Respondent's first IPV related to FAP benefits. Therefore, Respondent is subject to a 12-month disqualification 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 established, by clear and convincing evidence, that Respondent committed an IPV.
2. Respondent should be disqualified from FAP for 12 months.

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  
27260 Plymouth Rd.  
Redford, MI 48239

Wayne (District 15) County DHHS – Via  
Electronic Mail

MDHHS Recoupment – Via Electronic  
Mail

L. Bengel – Via Electronic Mail

**Petitioner**

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

**Respondent**

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