



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: February 3, 2020
MOAHR Docket No.: 19-010273
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 January 30, 2020, from Lansing, Michigan. The Department was represented by Valerie Mathis, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED], appeared and represented herself.

One exhibit was admitted into evidence. A 68-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 June 3, 2015, Respondent applied for assistance from the Department, including FAP benefits. In Respondent's application, Respondent reported that her household did not have any income from employment.
2. On April 4, 2017, the Department mailed a redetermination form to Petitioner to obtain information to review her eligibility for FAP benefits. Respondent completed the form and reported that her household did not have any income from employment.

3. On August 7, 2017, Respondent began employment at [REDACTED].
4. On August 18, 2017, Respondent received her first paycheck from [REDACTED].
5. The Department continued to issue FAP benefits to Respondent as if her household did not have any income from employment, and Respondent continued to use the FAP benefits to complete transactions.
6. The Department investigated Respondent's case and determined that Respondent was overissued FAP benefits because her household had earned income that was not reported.
7. The Department notified Respondent that she was overissued \$1,328.00 in FAP benefits from October 1, 2017, through April 30, 2018.
8. The Department has established the debt and has already begun recouping the amount of the overissuance.
9. On September 30, 2019, the Department's OIG filed a hearing request to establish that Respondent committed an IPV.
10. The Department requested that Respondent be disqualified from receiving program benefits for 12 months for a first IPV.
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).

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 her household had an increase in income. However, the Department did not present any evidence to establish that it instructed Respondent to report such a change to the Department. Thus, the Department did not establish that Respondent knew she was supposed to report her increase in household income to the Department. Therefore, even if Respondent failed to report her increase in household income to the Department, 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. The Department has not established, by clear and convincing evidence, that Respondent committed an IPV.
2. Respondent should not be disqualified from FAP for 12 months.

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

LaClair Winbush
17455 Grand River
Detroit, MI 48227

Wayne (District 31) County DHHS – Via
Electronic Mail

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]
[REDACTED] MI [REDACTED]