



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 4, 2020
MOAHR Docket No.: 20-000613
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 60-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], 2013, Respondent applied for FAP benefits from the Department. Respondent reported this his household [REDACTED] income. The Department instructed Respondent to report changes to the Department within 10 days of the date of the change, including changes in employment and income.

2. Respondent did not have any impairment that would have limited his understanding of his reporting responsibilities or his ability to carry out his reporting responsibilities.
3. The Department approved Respondent for FAP benefits.
4. On October 31, 2014, the Department mailed a notice of case action to Respondent to notify him that he was approved for FAP benefits based on a budgeted household income of [REDACTED] per month. The Department again instructed Respondent to report changes to the Department within 10 days of the date of the change, including changes in employment and income.
5. On November 4, 2014, Respondent began employment at [REDACTED]
6. Respondent did not report his employment to the Department.
7. The Department continued to issue FAP benefits to Respondent as if his household [REDACTED] income.
8. Respondent continued to use his FAP benefits to complete electronic benefit transfer (EBT) transactions.
9. The Department investigated Respondent's case and determined that it overissued FAP benefits to Respondent because he had unreported income.
10. 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.
11. On January 13, 2020, the Department's OIG filed a hearing request to establish that Respondent committed an IPV.
12. The OIG requested Respondent be disqualified from FAP for 12 months for a first IPV.
13. 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, the Department alleged that Respondent committed an intentional program violation when he purposely failed to report a change in employment to the Department to maintain his FAP benefits. I find that the Department has met its burden. The Department presented clear and convincing evidence to establish that Respondent had a change in employment that he purposely failed to report to the Department to maintain his FAP benefits.

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 employment. Respondent failed to report that he obtained employment within 10 days of the date of the change, and Respondent did not provide any explanation for his inaction.

Respondent’s failure to report his change in employment to the Department was an intentional misrepresentation to maintain or obtain benefits from the Department. Respondent began employment after the Department had advised him that he was required to report changes in employment to the Department. Thus, Respondent knew or should have known that he was required to report the change to the Department. However, Respondent did not report it. Respondent continued to receive FAP benefits as if he had not had a change in income from employment, and Respondent knew or

should have known that his FAP benefits would have been reduced if he reported his change since FAP benefits are income based and Respondent had a change in income.

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.

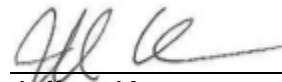
DECISION AND ORDER

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



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

Kimberly Kornoelje
Kent 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]