



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 3, 2020
MOAHR Docket No.: 20-000615
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: M [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 2, 2020. The Department was represented by Arielle King, 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 55-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. Respondent is a FAP benefit recipient.
2. On September 22, 2015, Respondent completed a redetermination and reported to the Department that her household did not have any income from employment.
3. On November 24, 2015, Respondent's daughter, [REDACTED], began at [REDACTED]
[REDACTED]

4. On December 11, 2015, [REDACTED] received her first paycheck from [REDACTED].
5. Respondent did not report that her household had a change in income from her daughter's income from [REDACTED].
6. Respondent's daughter continued to work for [REDACTED] and receive paychecks.
7. The Department issued FAP benefits to Respondent's household, which included Respondent's daughter, without budgeting her income from [REDACTED].
8. The Department investigated Respondent's case and discovered that it overissued FAP benefits to Respondent because her household had unreported income.
9. The Department attempted to contact Respondent to get her explanation for her failure to report her daughter's employment, but the Department was unable to get a response from Respondent.
10. On January 13, 2020, the Department's OIG requested a hearing to establish that Respondent committed an IPV.
11. The OIG requested that 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 not met its burden. The Department alleged that Respondent committed an intentional program violation because she failed to report a change in household income as required. Although the Department established that Respondent did not report a change in household income to the Department, the Department did not establish by clear and convincing evidence that Respondent did so intentionally to obtain, maintain, or increase her benefits.

The only evidence related to reporting instructions that the Department presented was a statement contained on a signed redetermination form in which Respondent acknowledged that she could go to a web address to view a publication, *Important Things to Know About Programs & Services*. The Department took the position that Respondent knew or should have known her reporting responsibilities because she acknowledged how to view a publication that contained information about her reporting responsibilities. The problem with the Department’s position is that it operates on the assumption that the publication contained the appropriate reporting instructions. The statement acknowledging how to view the publication is insufficient by itself to establish that Respondent knew her reporting responsibilities.

Respondent could have only intentionally failed to report a change in household income if she knew that she was required to report such a change. Since there is insufficient evidence to establish that Respondent knew her reporting responsibilities, there is insufficient evidence to establish that Respondent knowingly disregarded her reporting responsibilities to obtain, maintain, or increase her benefits.

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, 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.

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

Petitioner	MDHHS-OIG – via electronic mail MDHHS-Recoupment – via electronic mail L. Bengel – via electronic mail
DHHS	Sharnita Grant Wayne (District 18 Taylor) County DHHS – via electronic mail
Respondent	[REDACTED] – via first class mail [REDACTED] [REDACTED] MI [REDACTED]