



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
DIRECTOR

[REDACTED]
[REDACTED]
MI [REDACTED]

Date Mailed: June 6, 2024
MOAHR Docket No.: 23-007411
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Danielle R. Harkness

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 June 5, 2024. The Department was represented by James Kropinski, Lead 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).

A 74-page packet of documents provided by the Department was admitted collectively as the Department’s Exhibit A.

ISSUES

1. Did Respondent receive an overissuance of \$512.00 in Food Assistance Program (FAP) benefits from July 1, 2022, through September 30, 2022, that the Department is entitled to recoup and/or collect as a recipient claim?
2. Did the Department establish by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving FAP benefits for 24 months?

FINDINGS OF FACT

The Administrative Law Judge, based on the clear and convincing evidence on the whole record, finds as material fact:

1. On [REDACTED] 2022, Respondent applied for FAP benefits and reported her son, [REDACTED] (DH), as a household member. Exhibit A, pp. 11-19.

2. During a June 24, 2022, interview, Respondent's reporting rights and responsibilities were reviewed with Respondent. During the interview, Respondent also reported that DH was a household member. *Id.* at pp. 20-26.
3. On June 24, 2022, the Department mailed a notice of case action to Respondent to notify Respondent that Respondent was approved for FAP benefits. *Id.* at pp. 27-32. The notice advised Respondent that DH was included as a member of Respondent's group, and the notice instructed Respondent to report to the Department within 10 days of any change in the people living in Respondent's home. *Id.* A change report was also provided to Respondent to report any changes. *Id.* at pp. 33-35.
4. Respondent did not have any impairment that would have limited Respondent's understanding of Respondent's reporting responsibilities or Respondent's ability to carry out Respondent's reporting responsibilities. *Id.* at p. 67; Lead Agent Testimony.
5. On August 24, 2022, the Department received an internal referral alleging that DH was incarcerated. *Id.* at p. 4.
6. The Department initiated an investigation of Respondent's case.
7. On May 13, 2022, Respondent's son, DH, was booked in the Oakland County Jail. *Id.* at pp. 36-39.
8. On September 14, 2023, DH was transferred to the Charles Egeler Reception and Guidance Center. *Id.* at pp. 40-42. On October 19, 2023, the Department verified via the Michigan Department of Corrections (MDOC) - Offender Tracking Information System (OTIS) that DH continues to be incarcerated. *Id.*
9. The Department was unaware that DH ceased living in Respondent's home, so the Department continued to issue FAP benefits for DH to Respondent.
10. The Department determined that Respondent was overissued \$512.00 in FAP benefits for the months of July 1, 2022, through September 30, 2022. *Id.* at p. 60.
11. From June 1, 2012, through May 31, 2013, Respondent had a previous FAP IPV disqualification. *Id.* at pp. 68-71.
12. On October 30, 2023, the Department's OIG filed a hearing request to establish that Respondent was overissued \$512.00 in FAP benefits for the months of July 1, 2022, through September 30, 2022, and that Respondent committed a second IPV. *Id.* at pp. 1-74.
13. The Department's OIG requested Respondent be disqualified from FAP for 24 months. *Id.*

14. A notice of hearing was mailed to Respondent at Respondent's 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.

In this case, Respondent received more benefits than Respondent was entitled to receive because Respondent failed to report a change in Respondent's household size. Household size is considered when determining a household's FAP benefit. From July 1, 2022, through September 30, 2022, the Department overissued \$512.00 in FAP benefits without considering the change in Respondent's household size. The Department presented sufficient evidence to establish that Respondent was overissued \$512.00 in FAP benefits from July 1, 2022, through September 30, 2022.

Intentional Program Violation

An IPV occurs when an individual has intentionally withheld or misrepresented information for the purpose of establishing or maintaining benefits. BAM 720 (October 1, 2017), p. 1. An 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 must be established by clear and convincing evidence. BAM 720 at 1 and 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)).

The Department presented clear and convincing evidence to establish that Respondent had a change in household members that Respondent purposely failed to report to the Department so that Respondent could maintain Respondent's FAP benefits. Respondent was required to report changes in Respondent's circumstances to the

Department within 10 days of the change. Respondent knew or should have known about Respondent's reporting responsibilities because the Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent did not report Respondent's change when DH ceased living in Respondent's household, so Respondent withheld facts from the Department, and Respondent continued to receive FAP benefits as if Respondent had not had a change.

Disqualification

In general, individuals found to have committed an IPV 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. BAM 720 at 16 and 7 CFR 273.16(b). Only the individual who committed the violation shall be disqualified – not the entire household. BAM 720 at 16 and 7 CFR 273.16(b)(11).

In this case, Respondent was found to have committed an IPV related to FAP benefits and was disqualified from receiving FAP benefits from June 1, 2012, through May 31, 2013. Thus, this is Respondent's second IPV related to FAP benefits. Therefore, Respondent is subject to a 24-month disqualification from FAP.

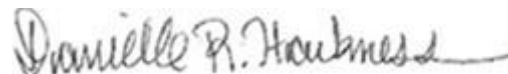
DECISION AND ORDER

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. Respondent received a \$512.00 overissuance of FAP benefits from July 1, 2022, through September 30, 2022, that the Department is entitled to recoup and/or collect as a recipient claim.
2. The Department established by clear and convincing evidence that Respondent committed an IPV.
3. Respondent should be disqualified from the Food Assistance Program for 24 months.

IT IS SO ORDERED.

DH/pt



Danielle R. Harkness
Administrative Law Judge

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

Via Electronic Mail:

Petitioner

OIG

PO Box 30062

Lansing, MI 48909-7562

MDHHS-OIG-HEARINGS@michigan.gov

DHHS

Yvonne Hill

Oakland County DHHS Madison Heights Dist.

30755 Montpelier Drive

Madison Heights, MI 48071

MDHHS-Oakland-DistrictII-Hearings@michigan.gov

Via First Class Mail:

Interested Parties

Oakland County DHHS

Policy Recoupment

N. Stebbins

MOAHR

Respondent

████████████████████

██

██████ MI ████████████████████