



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
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Date Mailed: September 20, 2023
MOAHR Docket No.: 23-002571
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [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 19, 2023. The Department was represented by Patrick Waldron, Regulation Agent of the Office of Inspector General (OIG). David Bluer (Respondent) did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

Two exhibits were admitted into evidence during the hearing. An 88-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A, and a phone call recording was admitted as the Department's Exhibit B.

ISSUES

1. Did Respondent receive an overissuance of Food Assistance Program (FAP) benefits 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 12 months?

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 April [REDACTED] 2022, Respondent applied to receive FAP benefits from the Department.

2. The Department provided Respondent with an information booklet during the application process, and the information booklet explained to Respondent that he had a responsibility to report changes to the Department within 10 days of the date of the change.
3. On April ■■■ 2022, the Department completed an interview with Respondent, and the Department explained the reporting responsibility to Respondent during the interview.
4. Respondent does not have any apparent physical or mental impairment that would limit his understanding or ability to accurately report changes.
5. On June ■■■ 2022, Respondent became incarcerated at the Macomb County Jail, and Respondent remained incarcerated there until April ■■■ 2023.
6. On April ■■■ 2023, Respondent was turned over to the custody of the United States Marshals, and Respondent has remained incarcerated since then.
7. Respondent did not report his incarceration to the Department.
8. While Respondent was incarcerated, the Department issued FAP benefits to Respondent, and Respondent's electronic benefit transfer (EBT) card was used to make purchases of food with Respondent's FAP benefits.
9. The FAP benefits that were issued to Respondent while he was incarcerated were issued to Respondent based on a group size of one.
10. A personal identification number (PIN) was required to be entered each time Respondent's EBT card was used to make a purchase, and Respondent had access and control over the PIN.
11. On July ■■■ 2022, Respondent made a phone call from the Macomb County Jail, and during the call Respondent instructed an individual to use his EBT card. Respondent provided his PIN over the phone.
12. Respondent's EBT card was used to complete purchases totaling \$■■■■■ from July 4, 2022, through August 22, 2022.
13. The food that was purchased while Respondent was incarcerated was not for Respondent since Respondent was incarcerated.
14. Respondent does not have any prior IPV disqualifications.
15. On May 5, 2023, the Department's OIG filed a hearing request to establish (a) that Respondent committed an IPV, and (b) that Respondent received an overissuance

of FAP benefits that the Department is entitled to recoup and/or collect as a recipient claim.

16. The Department's OIG requested that Respondent be disqualified from FAP for 12 months for a first IPV, and it requested to have an overissuance of \$ [REDACTED] established.
17. 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

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).

The Supplemental Nutrition Assistance Program (SNAP) is a federal food 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 pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

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 intended to commit an IPV. 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 alleged that Respondent committed an intentional program violation because Respondent's EBT card was used while Respondent was incarcerated. In essence, the Department is alleging that Respondent permitted someone to use his EBT card to purchase food that was not for Respondent. The Department presented sufficient evidence to establish that Respondent committed an act that constitutes a violation of SNAP regulations for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards.

Based on the evidence presented, Respondent permitted someone to use his EBT card to purchase food that was not for him. Respondent's EBT card was used to purchase food while Respondent was incarcerated, and the food that was purchased could not have

been for Respondent because Respondent was incarcerated and could not consume food purchased outside the facility where he was incarcerated. Respondent was responsible for the use of his EBT card while he was incarcerated because Respondent had access and control over his PIN, and his PIN was required to make a purchase with his EBT card. Respondent did not present any evidence to rebut the Department's evidence.

SNAP benefits may only be used to purchase food for the household that the benefits were issued to. 7 CFR 274.7. Respondent's FAP benefits were issued to Respondent, and Respondent was the only member of his group, so Respondent's EBT card could only be used to purchase food for him. When Respondent permitted someone to use his EBT card to purchase food that was not for him, Respondent transferred his FAP benefits to someone in violation of SNAP. This was an intentional program violation.

Disqualification

In general, individuals found to have committed an intentional Program violation through an administrative disqualification hearing shall be ineligible to participate in the Program: (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.

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). In this case, Respondent was overpaid FAP benefits because Respondent was issued FAP benefits that were used to purchase food that was not for Respondent. The Department presented sufficient evidence to establish that a total amount of \$[REDACTED] of FAP benefits issued to Respondent was used to purchase food that was not for Respondent. Thus, the total amount of the overpayment is \$[REDACTED]

DECISION AND ORDER

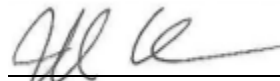
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received a \$[REDACTED] overissuance of Food Assistance Program benefits 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 Intentional Program Violation.

3. Respondent is personally disqualified from the Food Assistance Program for 12 months.

IT IS SO ORDERED.

JK/dm



Jeffrey Kemm

Administrative Law Judge
for Elizabeth Hertel, 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

Via-Electronic Mail :

Petitioner
OIG
**MDHHS-OIG-
HEARINGS@michigan.gov**
DHHS
Chelsea McCune
Macomb County DHHS Warren Dist.
**MDHHS-Macomb-20-
Hearings@michigan.gov**

Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

BSC4HearingDecisions
Respondent

[REDACTED]
[REDACTED]
[REDACTED]