



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

TONYA NEELEY
8419 REPUBLIC AVENUE
WARREN, MI 48089-1715

Date Mailed: June 6, 2024
MOAHR Docket No.: 23-007419
Agency No.: **119373050**
Petitioner: OIG
Respondent: **Tonya Neeley**

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 Regulations (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on June 5, 2024. The Department was represented by Office of Inspector General (OIG) Lead Regulation Agent Dory Bryant. Respondent, **Tonya Neeley**, did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

A 117-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 \$2,144.00 in Food Assistance Program (FAP) benefits from December 1, 2021, through February 28, 2022; September 1, 2022, through November 30, 2022; and June 1, 2023, through June 30, 2023, 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 clear and convincing evidence on the whole record, finds as material fact:

1. On **March 11**, 2021, Respondent applied for FAP benefits from the Department and reported no current income or employment. Exhibit A, pp. 11-17.
2. During a March 12, 2021, interview, Respondent reported she did not have any income. *Id.* at p. 18-21.

3. On March 12, 2021, the Department mailed a notice of case action to Respondent to notify Respondent that she was approved for FAP benefits based on reported earned income of \$0.00 per month. *Id.* at pp. 22-26. The Department instructed Respondent to report all changes in household income to the Department within 10 days of the date of the change. *Id.* A change report was also provided to Respondent to report any changes. *Id.* at pp. 27-29.
4. On June 23, 2022, Respondent applied for FAP benefits from the Department and reported no current income or employment. *Id.* at pp. 30-36.
5. During a June 23, 2022, interview, Respondent reported she did not have any income. *Id.* at p. 37-44.
6. On June 23, 2022, the Department mailed a notice of case action to Respondent to notify Respondent that she was approved for FAP benefits based on reported earned income of \$0.00 per month. *Id.* at pp. 45-50. The notice instructed Petitioner to report to the Department when Petitioner's household income exceeds the simplified reporting income limit of \$1,396.00. *Id.* at p. 46.
7. On June 23, 2023, Respondent applied for FAP benefits from the Department and reported no current income or employment. *Id.* at pp. 55-61.
8. During a June 28, 2023, interview, Respondent reported she did not have any income. *Id.* at p. 62-68.
9. On June 28, 2023, the Department mailed a notice of case action to Respondent to notify Respondent that she was approved for FAP benefits based on reported earned income of \$0.00 per month. *Id.* at pp. 69-73. The Department instructed Respondent to report all changes in household income to the Department within 10 days of the date of the change. *Id.* A change report was also provided to Respondent to report any changes. *Id.* at pp. 74-76.
10. From October 11, 2021, through March 9, 2022, Respondent was employed at Meijer and received her first check from this employment on October 22, 2021. *Id.* at pp. 77-78.
11. From July 29, 2022, through June 12, 2023, Respondent was employed at MD Martin Staffing. *Id.* at p. 79-80.
12. On June 28, 2023, Respondent began working at Walmart and received her first check from this employment on July 6, 2023. The Work Number shows that Respondent continued to be employed at Walmart as of the date the Work Number was run (August 31, 2023). *Id.* at pp. 81-82.
13. Respondent did not report her employment to the Department, and the Department was unaware of Respondent's employment, so the Department continued to issue FAP benefits from December 1, 2021, through February 28, 2022; September 1,

2022, through November 30, 2022; and June 1, 2023, through June 30, 2023, to Respondent without considering Respondent's earned income. *Id.* at pp. 83-87; 96-97.

14. From December 1, 2021, through February 28, 2022; September 1, 2022, through November 30, 2022; and June 1, 2023, through June 30, 2023, the Department determined that it overissued FAP benefits to Respondent because Respondent had unreported earned income. *Id.* The Department determined that Respondent's income exceeded the limit for Respondent to be eligible for FAP benefits from December 1, 2021, through February 28, 2022; September 1, 2022, through November 30, 2022; and June 1, 2023, through June 30, 2023. *Id.*
15. From December 1, 2021, through February 28, 2022; September 1, 2022, through November 30, 2022; and June 1, 2023, through June 30, 2023, the Department determined that Respondent was overissued a total of \$2,144.00 in FAP benefits because Respondent received \$2,144.00 in FAP benefits when she was not eligible for any. *Id.* at pp. 96-97.
16. The Department was unaware of Respondent's change in income, so the Department continued to issue FAP benefits to Respondent while she was working and earning income.
17. The Department subsequently discovered Respondent was earning income from employment, so the Department initiated an investigation of Respondent's case.
18. During the Department's investigation, the Department determined that it overissued FAP benefits to Respondent because she had unreported income.
19. Respondent did not have any impairment that would have limited her understanding of her reporting responsibilities or her ability to carry out her reporting responsibilities. *Id.* at p. 114.
20. The Department determined that Respondent was overissued \$2,144.00 in FAP benefits from December 1, 2021, through February 28, 2022; September 1, 2022, through November 30, 2022; and June 1, 2023, through June 30, 2023. *Id.* at p. 5.
21. From December 1, 2021, through February 28, 2022; September 1, 2022, through November 30, 2022; and June 1, 2023, through June 30, 2023, the Department established a claim for the amount of the overissuance.
22. On October 31, 2023, the Department's OIG filed a hearing request to establish an overissuance of \$2,144.00 from December 1, 2021, through February 28, 2022; September 1, 2022, through November 30, 2022; and June 1, 2023, through June 30, 2023, and that Respondent committed an IPV. *Id.* at pp. 1-117.
23. The Department's OIG requested that Respondent be disqualified from FAP for 12 months for a first IPV. *Id.* at p. 4.

24. 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).

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 had unreported income. FAP benefits are income-based, so the amount of income a household has determines the household's FAP benefit. From December 1, 2021, through February 28, 2022; September 1, 2022, through November 30, 2022; and June 1, 2023, through June 30, 2023, the Department overissued \$2,144.00 in FAP benefits without considering Respondent's earned income. The Department presented sufficient evidence to establish that Respondent was overissued \$2,144.00 in FAP benefits from December 1, 2021, through February 28, 2022; September 1, 2022, through November 30, 2022; and June 1, 2023, through June 30, 2023.

Intentional Program Violation

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 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)).

The Department presented clear and convincing evidence to establish that Respondent had changes in income that Respondent purposely failed to report to the Department so that Respondent could maintain her FAP benefits. Respondent was required to timely report changes in Respondent's circumstances to the Department. 7 CFR 273.12(a)(2). Although the Department clearly and correctly instructed Respondent to timely report changes to the Department, Respondent failed to timely report that Respondent had changes in Respondent's income and continued to receive FAP benefits as if Respondent had no change in income.

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. 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, and Respondent is subject to a 12-month disqualification from FAP.

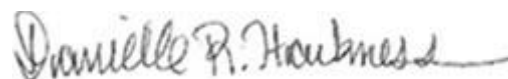
DECISION AND ORDER

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. Respondent received a \$2,144.00 overissuance of FAP benefits from December 1, 2021, through February 28, 2022; September 1, 2022, through November 30, 2022; and June 1, 2023, through June 30, 2023, 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 is personally disqualified from the Food Assistance Program for 12 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

Chelsea McCune

Macomb County DHHS Warren Dist.

13041 E 10 Mile

Warren, MI 48089

MDHHS-Macomb-20-Hearings@michigan.gov

Interested Parties

Macomb County DHHS

Policy Recoupment

N. Stebbins

MOAHR

Respondent

Via First Class Mail:

Tonya Neeley

8419 Republic Avenue

Warren, MI 48089-1715