



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: September 27, 2016
MAHS Docket No.: 15-017131
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Participants on behalf of Respondent included: [REDACTED]. On May 24, 2016, Respondent was sent notice of a hearing scheduled for June 27, 2016. On June 27, 2016, a building emergency occurred, which resulted in a state building closure. On July 11, 2016, an Order Granting Adjournment was issued. On August 12, 2016, Respondent was sent another Notice of Disqualification Hearing and a telephone hearing was held on September 15, 2016, from Lansing, Michigan.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Department establish by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance Program (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 an application for assistance dated November 10, 2009, the Respondent acknowledged the duty to report all household income to the Department in a timely manner. Exhibit A, pp 11-27.
2. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
3. On November 10, 2009, Respondent reported to the Department that his 18-year-old daughter (■■■■. DOB ■■■■) was living in his household and that he was requesting food assistance for her. Exhibit A, p 14.
4. On November 10, 2009, Respondent reported to the Department that no one in his household was employed. Exhibit A, p 20.
5. On November 20, 2009, Respondent reported to the Department that he was disabled and suffering from traumatic brain injury. Exhibit A, p 18.
6. On October 11, 2010, Respondent reported to the Department on a Redetermination (DHS-1010) form that no one in his household was employed. Exhibit A, p 28-31.
7. Respondent failed to report to the Department that his daughter ■■■■. had started employment on November 2, 2009, before he submitted his application for Food Assistance Program (FAP) benefits, and that this employment continued through October 23, 2010. Exhibit A, pp 32-60.
8. Respondent received Food Assistance Program (FAP) benefits totaling ■■■■ from November 10, 2009, through October 31, 2010. Exhibit A, pp 61-63.
9. If the earned income received by Respondent's daughter ■■■■.) has been applied towards the group's eligibility for Food Assistance Program (FAP) benefits, Respondent would have only received benefits totaling \$■■■■ from November 10, 2009, through October 31, 2010. Exhibit A, pp 64-90.
10. On September 16, 2015, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$■■■■ overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, p 6-9.
11. This was Respondent's first alleged IPV.
12. The Department's OIG filed a hearing request on September 16, 2015, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
13. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-119b, and Mich Admin Code, R 400.3001-.3011.

Hearing Notice

Respondent protested the scheduling of the hearing, which was originally scheduled for June 27, 2016, with notice to Respondent on May 24, 2016. On June 27, 2016, a building emergency occurred, which resulted in a state building closure. On August 12, 2016, Respondent was sent another Notice of Disqualification Hearing, with a telephone hearing scheduled for September 14, 2016.

Federal regulations in 7 CFR 273.14 require each State agency to provide a fair hearing to any household aggrieved by any action of the State agency, which affects the participation of the household in the program. In this case, Respondent is not an aggrieved party to this hearing and has failed to establish that the Department has taken a negative action against him other than alleging his intentional violation of Department policy. It is the Department that has requested this hearing, and alleged an intentional program violation (IPV) that the Department intends to establish through the fair hearing process. Federal regulations require that the Respondent receive at least 30 days notice of the disqualification hearing under 7 CFR 273.15. Respondent received at least 30 days notice of the hearing scheduled for September 15, 2016, and the record evidence supports a finding that he did receive this advanced notice.

Intentional Program Violation

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, **and**
 - the total OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, **or**

- the total OI amount is less than \$500, **and**
 - the group has a previous IPV, **or**
 - the alleged IPV involves FAP trafficking, **or**
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), **or**
 - the alleged fraud is committed by a state/government employee.

Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (January 1, 2016), pp 12-13.

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities.

Department of Health and Human Services Bridges Administrative Manual (BAM) 700 (January 1, 2016), p 7, BAM 720, p. 1.

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. BAM 720, p. 1 (emphasis in original); see also 7 CFR 273(e)(6).

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 1, 2013), p. 2. Clients are disqualified for periods of

one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

Failure to Report

Clients must report changes in circumstance that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. This duty to report circumstances affecting eligibility to receive benefits includes reporting earned income from employment and starting or stopping employment. Department of Human Services Bridges Assistance Manual (BAM) 105 (January 1, 2015), pp 1-20.

On an application for assistance dated November 10, 2009, the Respondent acknowledged the duty to report all household income to the Department in a timely manner. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Respondent argues that he did not intentionally withhold information about his daughter's earnings to the Department. Respondent reported on his application for FAP benefits that he is disabled due to traumatic brain injury.

Despite Respondent's physical and mental impairments, Respondent was able to complete the application process and become eligible for FAP benefits without the assistance of an authorized representative or benefit payee. Respondent's signature on his application for assistance represents an acknowledgment of his understanding and acceptance of his duties to receive FAP benefits. No evidence was presented on the record that Respondent is incompetent with respect to any other financial matters or obligations. This Administrative Law Judge finds that Respondent failed to establish that he was incapable of accepting and understanding the duties and requirements associated with participation in the Food Assistance Program (FAP).

Respondent failed to report to the Department that his daughter has started employment on November 2, 2009, before he submitted his application for FAP benefits. On October 11, 2010, Respondent reported to the Department that no one in his household was employed. While receiving ongoing FAP benefits, Respondent failed to report to the Department that his daughter's employment continued from November 2, 2009, through October 23, 2010.

Group composition

FAP group composition is established by determining who lives together, the relationship of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the persons resides in an eligible living situation. Parents and their children under 22-years-of-age who live together must be in the same FAP benefit group regardless of whether the children have their own spouse or child who lives with the group. Department of Human Services Bridges Eligibility Manual (BEM) 212 (October 1, 2015), p 1.

Respondent reported his 18-year-old daughter on his application for FAP benefits. As the parent of a child under 22-years-of-age, Respondent's daughter is a mandatory member of his FAP group.

Student Earning Disregard

The student earnings disregard applied to all sources of earned income including wages and training income. It ends the month after the student stops meeting a requirement. With respect to FAP eligibility, the Department will disregard the earnings of an individual who is under 18-years-of-age, is attending elementary, middle or high school including attending classes to obtain a GED, and living with someone who provides care or supervision. Department of Health and Human Services Bridges Eligibility Manual (BEM) 501 (July 1, 2016), p 2.

Respondent argued that the Department should have excluded his daughter's earned income from employment on the basis that she was a full-time student. On November 10, 2009, the Department received Respondent's application for FAP benefits. On the application date, Respondent's daughter was over the age of 18 and did not qualify for the student earning disregard.

Furthermore, the student earning disregard did not relieve Respondent of his duty to report the income of all household members to allow the Department to accurately determine whether the income should have been excluded. In this case, the record evidence supports a finding that this income was not reported in a timely manner.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

Respondent was a recipient of FAP benefits from November 10, 2009, through October 31, 2010. During this period, Respondent received FAP benefits totaling \$[REDACTED]. The evidence record supports a finding that the earned income received by Respondent's daughter was not applied towards the Department's determination of the amount of FAP benefits Respondent received. The Department credibly determined that if the earned income Respondent's daughter had received has been applied towards his eligibility for FAP benefits, then Respondent would have only received FAP benefits totaling \$[REDACTED] from November 10, 2009, through October 31, 2010. Therefore, Respondent received a \$[REDACTED] overissuance of FAP benefits.

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. BAM 720, p. 1 (emphasis in original); see also 7 CFR 273(e)(6).

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

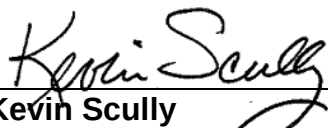
Respondent presented insufficient evidence to establish that he was not capable of understanding and fulfilling the duties associated with the receipt of FAP benefits when he submitted his application, and his signature on his application for benefits indicates his acceptance of those requirements. This Administrative Law Judge finds that the Department has presented clear and convincing evidence that the Respondent knowingly and intentionally failed to report the earned income received by a mandatory Food Assistance Program (FAP) benefit group member, his 18-year-old daughter, to the Department for the purpose of becoming eligible for and maintaining eligibility for Food Assistance Program (FAP) benefits that he would not have been eligible for otherwise.

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 did receive an OI of Food Assistance Program (FAP) program benefits in the amount of \$ [REDACTED]
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.
4. It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program (FAP) for a period of 12 months.

KS/las



Kevin Scully
Administrative Law Judge
for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]