



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR



Date Mailed: February 22, 2018
MAHS Docket No.: 17-010433
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. After due notice, a telephone hearing was held on January 23, 2018, from [REDACTED] Michigan. The Department was represented by [REDACTED] [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent represented herself.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and Child Development and Care (CDC) benefits that the Department is entitled to recoup?
2. Did the Department establish by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from the 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 May 17, 2005, Respondent acknowledged her duties and responsibilities including the duty to truthfully and completely report all countable income received. Respondent did not have an apparent

physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 12-19.

2. Respondent acknowledged under penalties of perjury that her May 17, 2005, application for assistance was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 18.
3. Respondent reported on her May 17, 2005, application for assistance that she was employed and receiving monthly pay before taxes of \$ [REDACTED] (tips included) and monthly take home pay after taxes of \$ [REDACTED]. Exhibit A, p 15.
4. On May 17, 2005, the Department received a Verification of Employment (FIA-38) listing Respondent's earned income from February 4, 2005, through April 29, 2005, and showing earned income in the average gross bi-weekly amount of \$ [REDACTED]. Exhibit A, pp 20-21.
5. On an application for assistance dated August 9, 2005, Respondent acknowledged her duties and responsibilities including the duty to truthfully and completely report all countable income received. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 22-29.
6. Respondent acknowledged under penalties of perjury that her August 9, 2005, application form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 28.
7. Respondent reported on her August 9, 2005, application for assistance that she was employed and receiving monthly pay before taxes of \$ [REDACTED] (tips included) and monthly take home pay after taxes of \$ [REDACTED]. Exhibit A, p 25.
8. The Department received a Verification of Employment (FIA-38) signed on August 5, 2005, listing Respondent's earned income from June 10, 2005, through August 5, 2005, and showing earned income in the average gross bi-weekly amount of \$ [REDACTED]. Exhibit A, pp 30-31.
9. On an application for assistance dated April 10, 2006, Respondent acknowledged her duties and responsibilities including the duty to truthfully and completely report all countable income received. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 32-39.
10. Respondent acknowledged under penalties of perjury that her April 10, 2006, application form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 38.

11. Respondent reported on her April 10, 2006, application for assistance that she was employed and receiving monthly pay before taxes of \$ [REDACTED] (tips included) and monthly take home pay after taxes of \$ [REDACTED]. Exhibit A, p 35.
12. The Department received a Verification of Employment (FIA-38) signed on April 8, 2006, listing Respondent's earned income from February 3, 2006, through March 31, 2006, and showing earned income in the average gross bi-weekly amount of \$ [REDACTED]. Exhibit A, pp 40-41.
13. On an application for assistance dated April 7, 2006, Respondent acknowledged her duties and responsibilities including the duty to truthfully and completely report all countable income received. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 42-45.
14. Respondent acknowledged under penalties of perjury that her April 7, 2006, application form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 44.
15. Respondent reported on her April 7, 2006, application for assistance that she was employed and receiving income in the gross amount of \$ [REDACTED]. Exhibit A, p 43.
16. On an application for assistance dated September 7, 2006, Respondent acknowledged her duties and responsibilities including the duty to truthfully and completely report all countable income received. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 46-49.
17. Respondent acknowledged under penalties of perjury that her September 7, 2006, application form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 48.
18. Respondent reported on her September 7, 2006, application for assistance that she was employed and receiving income in the gross amount of \$ [REDACTED]. Exhibit A, p 47.
19. The Department received a Verification of Employment (FIA-38) signed on September 12, 2006, listing Respondent's earned income from August 4, 2006, through September 15, 2006, and showing earned income in the average gross bi-weekly amount of \$ [REDACTED]. Exhibit A, pp 50-51.
20. Respondent's employer reported to the Michigan Unemployment Insurance Agency that Respondent received gross earnings of \$ [REDACTED] in the second quarter of 2006, \$ [REDACTED] in the first quarter of 2006, \$ [REDACTED] in the fourth quarter of 2005, \$ [REDACTED] in the third quarter of 2005, and \$ [REDACTED] in the second quarter of 2005. Exhibit A, pp 52-53.

21. On April 10, 2007, the Department received a Verification of Employment form and payroll records showing Respondent's bi-weekly paychecks from April 1, 2005, through November 27, 2006. Exhibit A, pp 54-57.
22. Respondent received Food Assistance Program (FAP) benefits totaling \$ [REDACTED] from June 1, 2005, through November 30, 2006. Exhibit A, p 63.
23. Respondent received Child Development and Care (CDC) benefits totaling \$ [REDACTED] from May 29, 2005, through November 30, 2016. Exhibit A, pp 58-62.
24. On July 10, 2017 the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ [REDACTED] overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-9.
25. The Department's OIG filed a hearing request on July 10, 2017, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
26. This was Respondent's first established IPV.
27. A notice of hearing was mailed to Respondent at the last known address and 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), 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.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

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.

Overissuance

When a client group receives benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. Department of Health and Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2016), p 1.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. Changes that must be reported include truthfully and completely report all countable income. Department of Human Services Bridges Assistance Manual (BAM) 105 (January 1, 2018), pp 1-20.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (April 1, 2016), p 11. The Department will act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change, except that the Department will act on a change other than a tape match within 10 days of becoming aware of the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (April 1, 2016), p 7. A

pending negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p 12.

On applications for assistance dated May 17, 2005, August 9, 2005, April 10, 2006, April 7, 2006, and September 7, 2006, Respondent acknowledged her duties and responsibilities including her duty to truthfully and accurately report her countable income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent acknowledged under penalties of perjury that each of her application forms were examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Respondent reported on each of her applications for assistance that she was employed and receiving earned income. On each application for assistance, Respondent reported her monthly pay before taxes and her monthly take home pay after taxes. Each of Respondent's applications for assistance was supported by a corresponding verification document supporting the income she had reported. Each verification document bears the signature of a representative of Respondent's employer.

Later, the Department would receive data from the Michigan Unemployment Insurance Agency showing that Respondent's employer had reported a different amount of income than the income listed on the verification documents received by the Department. The gross income reported by Respondent's employer directly to the Michigan Unemployment Insurance Agency is significantly higher than the income listed on Respondent's verification documents.

The Department's representative testified that through collateral contacts with Respondent's employer it was discovered that it is the standard practice of Respondent's employer to provide payroll printouts when submitting verification of employment. The verification document submitted to the Department supporting Respondent's application for assistance have hand written income figures written on the forms. The Department alleges that Respondent fraudulently wrote the income figures into the verification documents herself for the purposes of concealing the true amount of her monthly earned income.

Regardless of the source of the error, it is not disputed that Respondent's actual gross income was not used to determine her eligibility for FAP and CDC benefits from June of 2005, through November of 2016. Respondent received FAP benefits totaling \$ [REDACTED] from June 1, 2005, through November 30, 2006. If Respondent's actual earned income had been applied towards her eligibility for FAP benefits, then she would have been eligible for FAP benefits totaling \$ [REDACTED] during that same period. Respondent received CDC benefits totaling \$ [REDACTED] from May 29, 2005, through November 30, 2016. If Respondent's actual earned income had been applied towards her eligibility for CDC benefits, then she would have not been eligible for any CDC benefits during that period. Therefore, Respondent received a \$ [REDACTED] overissuance of FAP benefits and a \$ [REDACTED] overissuance of CDC benefits.

Intentional Program Violation

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.

BAM 700, p 7, BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. 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).

The Department has the burden of establishing by clear and convincing evidence that 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 argues that she did not intentionally misrepresent her earned income to the Department but that she mistakenly reported her net income instead of the gross income.

The verification of employment forms the Department relied upon to determine Respondent's eligibility for FAP and CDC benefits list income substantially lower than her actual gross income during those periods. Although it may be the practice of Respondent's employer to submit printouts showing income rather than to hand write

income onto the Department's verification form, it is not clear who wrote the lower amounts on the verification documents.

However, it is clear that the income figures reported on the applications for assistance were entered by Respondent because she signed those application forms. The applications for assistance list monthly income amounts substantially similar to the income listed on the verification documents.

Respondent acknowledged under penalties of perjury that each of her application forms were examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Respondent recorded her "monthly pay before taxes," also known as gross pay, as well as her monthly "take home pay after taxes," also known as net pay, on the applications the Department relied on to determine her eligibility for assistance. The assertions Respondent made on her applications for assistance were supported by the verification documents submitted to the Department. The income amounts reported by Respondent were neither true nor complete since her actual income was significantly higher than the amounts she reported on her applications and verified on her verification of employment forms.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally underreported her earned income for the purposes of becoming eligible for and maintaining her eligibility for FAP and CDC benefits that she would not have been eligible for otherwise.

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.

The record evidence indicates that this is Respondent's first established IPV violation.

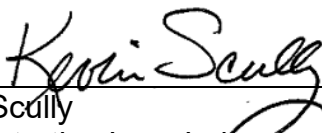
The Department has established an Intentional Program Violation (IPV).

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

KS/nr



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]

Petitioner

[REDACTED]

Respondent

[REDACTED]