



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: March 19, 2018
MAHS Docket No.: 17-016362
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, telephone hearing was held on February 13, 2018, from [REDACTED] Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent represented himself.

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 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 transferred to the Department through the Federally Facilitated Marketplace dated December 18, 2013, Respondent acknowledged his duties and responsibilities including the duty to truthfully and completely report his income to the Department. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 11-23.

2. On January 26, 2015, Respondent was an ongoing Food Assistance Program (FAP) recipient when the Department received his Semi-Annual Contact Report (DHS-1046) where he certified that the statements on that form were true and correct to the best of his knowledge. Exhibit A, pp 24-25.
3. Respondent reported to the Department on his January 26, 2015, Semi-Annual Contact Report (DHS-1046) that his household income had not changed by more than \$ [REDACTED] from the \$ [REDACTED] gross earned income used in his food assistance budget. Exhibit A, p 25.
4. Respondent began employment with the [REDACTED] on August 18, 2014 and received earned income in the gross amounts of \$ [REDACTED] on September 5, 2015, and \$ [REDACTED] on September 19, 2014. Exhibit A, pp 28-29.
5. Respondent began employment with the [REDACTED] on November 3, 2014, and received earned income from January 2, 2015, through July 17, 2015. Exhibit A, pp 30-31.
6. Respondent was employed by the [REDACTED] receiving earned income in the gross monthly amount of \$ [REDACTED] in the third quarter of 2014, and \$ [REDACTED] in the fourth quarter of 2014. Exhibit A, p 26.
7. Respondent received monthly child support in the gross monthly amount of \$ [REDACTED]
8. Respondent's spouse received monthly earned income from employment in the gross monthly amount of \$ [REDACTED] that Respondent had reported to the Department. Exhibit A, p 25.
9. Respondent received Food Assistance Program (FAP) benefits as a group of three totaling \$ [REDACTED] from September 1, 2014, through July 31, 2015.
10. On November 28, 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.
11. The Department's OIG filed a hearing request on November 28, 2017, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
12. This was Respondent's first established IPV.
13. 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.

On October 16, 2017, the Department notified Respondent that the Office of Inspector General was conducting an investigation concerning the issuance of ineligible public assistance benefits on his behalf. On October 26, 2017, the Department sent a request for a Disqualification Hearing to the Michigan Administrative Hearing System (MAHS) alleging an Intentional Program Violation. On October 26, 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).

At some point, the Department determined that it had incorrectly determined the amount of FAP benefits that Respondent was eligible for during the period of alleged overissuance. On November 29, 2017, the Department withdrew its request for a disqualification hearing.

On November 28, 2017, the Department sent another request for a disqualification hearing to MAHS alleging that Respondent had committed an Intentional Program Violation. This hearing was scheduled for February 13, 2018.

Respondent did not receive a final decision on the hearing requested on October 26, 2017, and the concept of res judicata does not apply to these allegations of an Intentional Program Violation. The Department is entitled to a hearing and a final decision to establish a debt caused by overpayment of public assistance benefits and disqualification of Respondent in accordance with its policies.

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 changes in employment status and earned 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 (January 1, 2018), p 12. 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 (January 1, 2018), p 7. A pended 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.

Respondent was an ongoing FAP recipient on January 26, 2015, when the Department received his completed Semi-Annual Contact Report (DHS-1046) where he certified that the statements on that form were true and correct to the best of his knowledge. Respondent reported that there had been no change in earned income from the gross

monthly earnings of \$ [REDACTED] that was being used to determine his eligibility for FAP benefits.

Respondent failed to report his employment and earned income to the Department. Respondent received earned income from the [REDACTED] in September of 2014, that was not reported to the Department. Respondent received earned income from the [REDACTED] from January 2, 2015, through July 17, 2015, that was not reported to the Department. Respondent received earned income from The [REDACTED] [REDACTED] in the third and fourth quarter of 2014 that was not reported to the Department.

Respondent received FAP benefits totaling \$ [REDACTED] from September 1, 2014, through July 31, 2015. If Respondent had reported his earned income to the Department in a timely manner, then he would have been eligible for a \$ [REDACTED] monthly allotment of FAP benefits in October of 2014. The gross income limit for a group of three to receive FAP benefits in September of 2014, was \$ [REDACTED] making Respondent ineligible for any FAP benefits regardless of his monthly expenses. Department of Health and Human Services Reference Table Manual (RFT) 250 (October 1, 2013), p 1. Effective October 1, 2014, the gross monthly income limit increased to \$ [REDACTED] making Respondent ineligible for any FAP benefits regardless of his monthly expenses.

In October of 2014, Respondent's household income was less than the gross monthly income limit. Respondent had reported his spouse's earned income in the gross monthly amount of \$ [REDACTED] and for the purposes of determining eligibility for FAP benefits, this amount was reduced by the 20% earned income deduction. Since Respondent's earned income in the gross monthly amount of \$ [REDACTED] was not reported to the Department, Respondent is not entitled to an earned income deduction. Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (October 1, 2017), p 10. Respondent's household also received child support in the gross monthly amount of \$ [REDACTED] which fits the Department's definition of countable unearned-income. Therefore, Respondent's actual total gross monthly income in October of 2014 was \$ [REDACTED]. Respondent's adjusted gross income of \$ [REDACTED] was determined by reducing his total gross monthly income by the \$ [REDACTED] standard deduction and a \$ [REDACTED] dependent care deduction.

Since Respondent's actual gross monthly income exceeded the gross monthly income limit for the majority of the period of alleged overissuance, Respondent's countable dependent care expenses did not factor into the determination of his actual eligibility for FAP benefits for months other than October. When the Department initially requested a disqualification hearing, Respondent's dependent care expenses had not been applied towards the determination of the alleged overissuance. That is why the first request for a hearing was withdrawn. Once the alleged overissuance was redetermined, the Department made a subsequent request for a disqualification hearing.

Respondent was eligible for a deduction for shelter expenses in October of 2014 since his household income was less than the gross monthly limit. He was not entitled to a shelter deduction in months that his gross income exceeded the limit. In October of 2014, Respondent was entitled to a deduction for shelter expenses, and he received the

maximum shelter deduction allowable for a benefit group not containing a disabled group member, which was \$ [REDACTED] in October of 2014. Department of Health and Human Services Reference Table Manual (RFT) 255 (October 1, 2014), p 1.

Respondent's net income of \$ [REDACTED] was determined by reducing his adjusted gross income by the \$ [REDACTED] maximum shelter expense deduction. A household of three with a net income of \$ [REDACTED] was entitled to a \$ [REDACTED] monthly allotment of FAP benefits in October of 2014. Department of Health and Human Services Reference Table Manual (RFT) 260 (October 1, 2014), p 14.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2015), p 1. Since Respondent's household received FAP benefits totaling \$ [REDACTED] in October of 2014, he received a \$ [REDACTED] overissuance of benefits in that month. Since Respondent was not eligible for any FAP benefits in the other months from September 1, 2014, through July 31, 2015, he received a \$ [REDACTED] overissuance of FAP benefits during that period.

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 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 certified on a Semi-Annual Contact Report (DHS-1046) on January 26, 2015, that his household income had not changed by more than \$ [REDACTED] from the \$ [REDACTED] that was being used to determine his eligibility for FAP benefits. Later, the Department would compare the income Respondent had reported for the purposes of determining his eligibility for FAP benefits with the income that had been reported to the Michigan Unemployment Insurance Agency. Due to the income he received that was not reported to the Department, Respondent received an overissuance of FAP benefits in excess of \$ [REDACTED].

Respondent failed to offer any evidence that he reported his earned income to the Department in a timely manner. Respondent testified that his household income during this period had drastically decreased from what he received previously, but the income that was reported to the Department was significantly less than the income that he actually received.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report his earned income from employment to the Department for the purposes of maintaining his eligibility for FAP benefits that he 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.

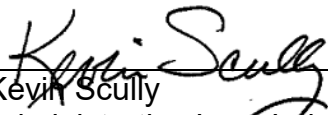
The Department has established an Intentional Program Violation (IPV).

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. 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/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]

[REDACTED]

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]