



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: March 30, 2018
MAHS Docket No.: 18-000187
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 27, 2018, from [REDACTED] Michigan. The Department was represented by [REDACTED] [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

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) and Child Development and Care (CDC) programs?

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 February 20, 2009, Respondent acknowledged her duties and responsibilities including the duty to report changes in employment status and increases in earned income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 11-26.

2. On an application for assistance dated May 24, 2011, Respondent acknowledged her duties and responsibilities including the duty to report changes in employment status and increases in earned income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 27-31.
3. On a Semi-Annual Contact Report (DHS-1046) received by the Department on September 14, 2011, Respondent certified that the information she was providing the Department was true and correct to the best of her knowledge. Exhibit A, pp 40-41.
4. On a Semi-Annual Contact Report (DHS-1046) received by the Department on September 14, 2011, Respondent reported to the Department that her earned income had not increased by more than \$ [REDACTED] from the gross earned income of \$ [REDACTED] used in her food assistance budget. Exhibit A, pp 40-41.
5. Respondent started new employment on May 5, 2011, and received earned income from May 20, 2011, through June 29, 2012. Exhibit A, pp 42-44.
6. Respondent's gross monthly income exceeded \$ [REDACTED] from September 1, 2011, through June 29, 2012. Exhibit A, pp 42-44.
7. Respondent received Food Assistance Program (FAP) benefits as a group of two totaling \$ [REDACTED] from September 1, 2011, through April 30, 2012. Exhibit A, p 45.
8. Respondent received Child Development and Care (CDC) benefits totaling \$ [REDACTED] from September 10, 2011, through December 31, 2011. Exhibit A, pp 46-47.
9. Respondent received Child Development and Care (CDC) benefits totaling \$ [REDACTED] from February 11, 2012, through May 19, 2012. Exhibit A, pp 48-49.
10. On January 3, 2018, 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 5-8.
11. On January 3, 2018, the Department sent Respondent a CDC Disqualification Consent Agreement (MDE-832). Exhibit A, p 100.
12. The Department's OIG filed a hearing request on January 3, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
13. This was Respondent's first established IPV.
14. 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 the duty to report changes in employment status and increases in 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 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 February 20, 2009, and May 24, 2011, Respondent acknowledged her duties and responsibilities including her duty to report any changes in employment status and increases in earned income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent was approved for FAP and CDC benefits based on a gross monthly income of \$ [REDACTED]

On September 14, 2011, the Department received Respondent's Semi-Annual Contact Report (DHS-1046) where she reported that her gross earned income had not increased by more than \$ [REDACTED] from the gross earned income of \$ [REDACTED] used in her food assistance budget. Respondent's signature on that form certified that the information she was reported to the Department was true and correct to the best of her knowledge.

The simplified income limit and gross income limit for a group of two to receive FAP benefits in September of 2011 was \$ [REDACTED] and \$ [REDACTED] from October 1, 2011, through September 30, 2011. Department of Health and Human Services Reference Table Manual (RFT) 250 (October 1, 2010; October 1, 2011), p 1.

The record evidence supports a finding that Respondent failed to report an increase of income from the level of income that the Department was using to determine her eligibility for ongoing FAP and CDC benefits. Respondent's actual income from September 1, 2011, through May 31, 2012, made her ineligible as a group of two to

receive FAP benefits. If Respondent had reported her true income on her September 14, 2011, Semi-Annual Contact Report, then the Department would have closed her FAP benefits. Respondent was not eligible for any of the FAP benefits she received from September 1, 2011, through April 30, 201. Therefore, Respondent received a \$ [REDACTED] overissuance of FAP benefits.

The monthly income limit for a group of two to receive any CDC benefits was \$ [REDACTED] from September 1, 2011, through May 31, 2012. Department of Health and Human Services Reference Table Manual (RFT) 270 (January 1, 2011; October 1, 2011), p 1.

Respondent's actual income from September 1, 2011, through December 31, 2012, made her ineligible as a group of two to receive any CDC benefits at any level of subsidy. Respondent was eligible for CDC benefits totaling \$ [REDACTED] from February 11, 2012, through May 19, 2012. If Respondent had reported her true income on her September 14, 2011, Semi-Annual Contact Report, then the Department would have closed her CDC benefits. Respondent was not eligible for any of the CDC benefits she received from September 10, 2011, through December 31, 2011, and eligible for only \$ [REDACTED] from February 11, 2012, through May 19, 2012. Therefore, Respondent received 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 acknowledged her duties and responsibilities on applications for assistance dated February 20, 2009, and May 24, 2011. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent certified that the information she had reported on a Semi-Annual Contact Report received by the Department on September 14, 2011, was true and correct to the best of her knowledge.

However, the information Respondent reported to the Department on September 14, 2011, was neither true nor correct. Respondent's actual earned income had increased to the point that she was no longer eligible for FAP or CDC benefits. As a result of Respondent's failure to report a change to her circumstances in a timely manner, she received an overissuance of FAP and CDC benefits.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report an increase of earned income for the purposes of maintaining her eligibility for FAP and CDC benefits 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 will impose a disqualification from the CDC program for an intentional program violation of six months for the first occurrence, twelve months for the second occurrence, and a lifetime for the third occurrence. Department of Health and Human

Services Bridges Eligibility Manual (BEM) 708 (July 1, 2017), pp 1-2. Department policy item BEM 708 was not adopted until April 1, 2014 and cannot be applied *ex post facto*.

However, BEM 708 was enacted using Mich Admin Code, R 400.5020 as a guide. This rule was rescinded effective February 16, 2016 but was in effect while Respondent committing an IPV. Therefore, there was authority in place during the period of overissuance for the Department to disqualify Respondent for her actions. Therefore, a six-month disqualification from CDC is appropriate in this case.

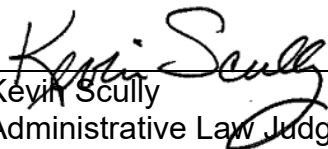
The Department has established an Intentional Program Violation (IPV).

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 Food Assistance Program (FAP) for a period of 12 months.
6. It is FURTHER ORDERED that Respondent be disqualified from Child Development and Care (CDC) program for a period of 6 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]