



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: July 3, 2018
MAHS Docket No.: 17-016661
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [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 June 5, 2018, from Lansing, Michigan. The Department was represented by Jason Rupp, 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) 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 [REDACTED], 2014, Respondent acknowledged her duties and responsibilities including the duty to report any changes to the number of people in her home. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 14-61.

2. Respondent acknowledged under penalties of perjury that her [REDACTED], 2014, 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 43.
3. Respondent reported on her [REDACTED], 2014, application for assistance that she was living with three children in her home. Exhibit A, pp 18-21.
4. Respondent reported on an application for assistance dated [REDACTED], 2015, that she was living with three children in her home. Exhibit A, pp 66-69.
5. Respondent reported on an application for assistance dated [REDACTED], 2015, that she was living with three children in her home. Exhibit A, pp 89-92
6. Respondent reported on an application for assistance dated [REDACTED], 2015, that she was living with three children in her home. Exhibit A, pp 102-105.
7. Respondent reported on an application for assistance dated [REDACTED], 2015, that she was living with three children in her home. Exhibit A, pp 115-118.
8. Respondent reported on an application for assistance dated [REDACTED], 2015, that she was living with three children in her home. Exhibit A, pp 134-137.
9. Respondent reported on a Redetermination (DHS-1010) received by the Department on [REDACTED], 2015, application for assistance that she was living with three children in her home. Exhibit A, pp 154-155.
10. Respondent acknowledged under penalties of perjury that her [REDACTED], 2015, redetermination 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 157.
11. Respondent reported on Redetermination (DHS-1010) received by the Department on [REDACTED], 2015, application for assistance that she was living with three children in her home. Exhibit A, p 162.
12. Respondent acknowledged under penalties of perjury that her [REDACTED], 2015, redetermination 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 164.
13. Respondent's three children attended the [REDACTED] School from September 2, 2014, through June 10, 2015. Exhibit A, p 165-168.
14. [REDACTED] School records indicate that the children's grandmother is the primary guardian of Respondent's children and Respondent is listed as a secondary guardian for the 2017-2018 school year. Exhibit A, pp 209-213.
15. Respondent signed a lease for an apartment with the same address as the residence she reported on her applications for assistance for the term January 1, 2014, through December 31, 2015. Exhibit A, pp 199-207.

16. Respondent reported to the Department that the father of the children does not have custody of them.
17. Respondent received Food Assistance Program (FAP) benefits totaling \$6,763 from November 21, 2014, through January 31, 2016. Exhibit A, p 171.
18. Respondent received Family Independence Program (FIP) benefits totaling \$1,791 from November 1, 2015, through January 31, 2016. Exhibit A, p 172.
19. On November 28, 2017, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$7,147 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-10.
20. 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.
21. This was Respondent's first established IPV.
22. 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.
23. On May 8, 2012, the Department requested a hearing to establish an Intentional Program Violation for an overissuance of Food Assistance Program (FAP) and Child Development and Care (CDC) benefits received from April 1, 2011, through May 31, 2011. See MAHS Docket No. 2012-50034.
24. On July 11, 2012, Michigan Administrative Hearing System (MAHS) issued a decision finding that the record evidence was insufficient to establish an Intentional Program Violation (IPV). See MAHS Docket No 2012-50034.
25. On February 8, 2016, the Department received Respondent's request for a hearing protesting the closure of her Food Assistance Program (FAP) and Family Independence Program (FIP) effective March 1, 2016. See MAHS Docket No. 16-001871.
26. On March 29, 2016, Michigan Administrative Hearing System (MAHS) issued a decision reversing the closure of Food Assistance Program (FAP) benefits but upholding the closure of Family Independence Program (FIP) benefits. See MAHS Docket No. 16-001871.

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

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 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 to the number of people in the household. Department of Human Services Bridges Assistance Manual (BAM) 105 (January 1, 2018), pp 1-20.

On an application for assistance dated November 21, 2014, Respondent acknowledged her duties and responsibilities including the duty to report any change to the number of people in her home. 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 her November 21, 2014, application form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Respondent reported on her November 21, 2014, application form that she was living with three children.

Respondent consistently reported having the same address and that her three children were living with her in her home on forms submitted to the Department from November 21, 2014, through December 21, 2015.

The Department initiated a Front End Eligibility (FEE) investigation to determine where Respondent was living and who was living in her household. The Department discovered that Respondent's three children were enrolled in the Big Rock Elementary School from September 2, 2014, through June 10, 2015. School records indicate that the children remain enrolled in that school through the 2017-2018 school year. School records indicate that the children's grandmother is their primary guardian and list Respondent as a secondary guardian. The home address of the children is the same address as the grandmother in the school records, which is closer to the school than Respondent's reported home residence address.

Respondent testified that she listed the grandmother as the primary guardian to make it easier for the grandmother to pick up the children from school if she was unavailable.

The Department's representative testified that an investigator spoke with Respondent's landlord, known as [REDACTED], who claimed not to have ever seen Respondent's children. Respondent disputes this testimony and this Administrative Law Judge finds the landlords statements to be unreliable hearsay.

The Department offered a copy of Respondent's lease, which does not support a finding that the children live in the apartment listed as her residence.

Respondent applied for FAP and FIP benefits asserting that her children lived with her full time. No evidence was presented on the record of any joint custody arrangement for the children. The children's school records support a finding that the children were living with their grandmother for the purposes of attending a school closer to the grandmother's home than her address of record.

Respondent received FAP benefits based on her being the primary caretaker of the three children, which requires that they sleep in her home more than half of the nights on average each month. Department of Health and Human Services Bridges Eligibility Manual (BEM) 212 (January 1, 2017), pp 1-13.

Respondent received FIP benefits based on her being the caretaker of three dependent children who live with her as a legal parent. Department of Health and Human Services Bridges Eligibility Manual (BEM) 210 (April 1, 2017), pp 1-18.

The record evidence supports a finding that Respondent was not the primary caretaker of her children. Respondent received FAP benefits totaling \$6,763 from November 21, 2014, through January 31, 2016, as a group of four. As a group of one, Respondent would have been eligible for only \$1,407 of those FAP benefits. Respondent received FIP benefits totaling \$1,791 from November 1, 2015, through January 31, 2016, but would not have been eligible for any of those benefits as the non-primary caretaker of her children. Therefore, because Respondent was not the primary caretaker of her children, she received a \$7,147 overissuance of FAP and FIP benefits.

Respondent argued that she has been cleared of fraud by a previous hearing decision.

On July 11, 2012, MAHS issued a decision finding that the record evidence in that hearing was insufficient establish an IPV for the period of April 1, 2011, through May 31, 2011. That hearing decision is not relevant to the issue of whether Respondent is responsible for an IPV for the period of November 1, 2014, through January 31, 2016.

On March 29, 2016, MAHS issued a decision reversing the closure of FAP benefits but upholding the closure of FIP benefits effective March 1, 2016. That hearing decision is not relevant to the issue of whether Respondent is responsible for an IPV for the period of November 1, 2014, through January 31, 2016. The closure of FIP as of March 1, 2016, is not proof of ineligibility for FIP benefits from November 1, 2015, through January 31, 2016, and it is not inconsistent either.

Respondent failed to present any evidence of a hearing decision clearing her from an alleged IPV during the period of overissuance alleged by the Department on November 28, 2017.

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 the reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits the 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 acknowledged her duties and responsibilities including her duty to report changes to the number of people living in her home. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent consistently reported to the Department that she was the primary caretaker of three minor children living in her home and the Department relied on these statements to determine her eligibility for FAP and FIP benefits. Respondent failed to report that her children were living with their grandmother for any length of time during while she was receiving benefits based their presence in Respondent's home.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to accurately report the circumstances of where her children were living for the purposes of maintaining eligibility for FAP and FIP 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.

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 \$5,356.
3. Respondent did receive an OI of Family Independence Program (FIP) benefits in the amount of \$1,791.
4. The Department is ORDERED to initiate recoupment procedures for the amount of \$7,147 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.

6. It is FURTHER ORDERED that Respondent be disqualified from the Family Independence Program (FIP) for a period of 12 months.

KS/hb



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) 763-0155; 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

Kathleen Verdoni
411 East Genesee
PO Box 5070
Saginaw, MI 48607

Saginaw County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]