



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: July 5, 2018
MAHS Docket No.: 17-016695
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 June 5, 2018, from Lansing, Michigan. The Department was represented by Joseph Gregurek, 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) 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 change of 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 11-30.

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 30.
3. Respondent reported on her [REDACTED], 2014, application for assistance that the only income being received in her household was her social security benefits. Exhibit A, pp 25.
4. On November 18, 2014, the Department notified Respondent that she was approved for Food Assistance Program (FAP) benefits based on \$0 earned income and \$735 gross monthly unearned income. Exhibit A, pp 31-36.
5. On an application for assistance dated [REDACTED], 2014, Respondent acknowledged her duties and responsibilities including the duty to report any change of 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 37-58.
6. 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 57.
7. Respondent reported on her [REDACTED], 2014, application for assistance that she was not employed. Exhibit A, pp 49.
8. Respondent reported on her [REDACTED], 2014, application for assistance that she was receiving social security benefits and another household member was receiving unemployment assistance benefits. Exhibit A, p 50.
9. On January 6, 2015, the Department notified Respondent that she was approved for FAP benefits based on \$0 earned income and \$1,813 gross monthly unearned income. Exhibit A, pp 59-63.
10. Respondent was employed and received earned income from December 11, 2014, through February 12, 2015. Exhibit A, pp 71-76.
11. On February 20, 2015, the Department notified Respondent that she was no longer eligible for Food Assistance Program (FAP) benefits as of April 1, 2015, due to the household's net earned and unearned income. Exhibit A, pp 64-67.
12. Respondent received Food Assistance Program (FAP) benefits totaling \$1,629 from January 1, 2015, through March 31, 2015. Exhibit A, p 81.
13. On November 27, 2017, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$1,404 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-8.

14. The Department's OIG filed a hearing request on November 27, 2017, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.

15. This was Respondent's first established IPV.

16. 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 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 increases in earned income. Department of Human Services Bridges Assistance Manual (BAM) 105 (January 1, 2018), pp 1-20.

On an application for assistance dated [REDACTED], 2014, Respondent acknowledged 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. 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. Respondent reported to the Department that she was not employed, and her social security benefits was the only income being received in her household.

On another application for assistance dated [REDACTED], 2014, Respondent acknowledged 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. 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. Respondent again reported to the Department that no one in her household was employed and that the only income being received was social security benefits and unemployment benefits.

Respondent failed to report becoming employed and receiving earned income from December 11, 2014, through February 12, 2015. Respondent received FAP benefits totaling \$1,629 from January 1, 2015, through March 31, 2015, and her benefits closed as of April 1, 2015. If Respondent had truthfully reported the earned income from employment she received to the Department then she would have received FAP benefits totaling \$225 during that same period. Therefore, Respondent received a \$1,404 overissuance of FAP 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 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 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 including her duty to report changes in employment status and increases in earned income when she signed applications for assistance dated [REDACTED], 2014, and [REDACTED], 2014. 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 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 both of her applications for assistance that she was not employed. Respondent's failure to report her employment and the earned income she was receiving caused her to receive an overissuance of FAP benefits until her benefits were closed effective April 1, 2015.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report her earned income from employment for the purposes of becoming eligible for FAP 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 \$1,404.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$1,404 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/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

Julie Claffey
725 Richard Drive
Harrison, MI 48625

Clare County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
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Respondent

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