



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: September 27, 2018
MAHS Docket No.: 18-002788
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. A hearing scheduled for August 6, 2018, was adjourned on July 23, 2018. After due notice, a telephone hearing was held on August 28, 2018, from Lansing, Michigan. The Department was represented by Jennifer Allen, 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], 2016, Respondent acknowledged her duties and responsibilities including the duty to report persons in her household. Respondent did not have an apparent physical or mental

impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 23-48.

2. Respondent acknowledged under penalties of perjury that her [REDACTED], 2016, 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], 2016, application for assistance that her household consisted of herself and her daughter. Respondent did not report how many days her daughter stayed in her home on this application for Medical Assistance (MA) benefits. Exhibit A, pp 25-26.
4. Respondent acknowledged under penalties of perjury that her Redetermination (DHS-1010) form that was received by the Department on May 30, 2016, was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, pp 49-54.
5. Respondent reported on her May 30, 2016, Redetermination form that no one had moved into her home or left her home. Respondent also reported that no one in her household had court-ordered child support expenses. Exhibit A, p 51.
6. Respondent acknowledged under penalties of perjury that her June 15, 2017, 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, pp 55-109.
7. Respondent reported on her [REDACTED], 2017, application for assistance that her household consisted of herself and her daughter. Respondent also reported that she usually buys and fixes food with her daughter. Respondent did not report how many days her daughter stayed in her home on this application for assistance. Exhibit A, pp 59-62.
8. Respondent acknowledged under penalties of perjury that her [REDACTED], 2017, 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, pp 110-140.
9. Respondent reported on her July 31, 2017, application for assistance that her household consisted of only herself. Exhibit A, p 113.
10. On December 17, 2015, the 44th Circuit Court of Livingston County issued a Consent Order Regarding Custody, Parenting Time, and Child Support. This order established that Respondent and her daughter's father would have parenting time on alternate weeks during the school year. Exhibit A, pp 15-22.
11. On November 19, 2015, the 44th Judicial Circuit Court of Livingston County issued a Uniform Child Support Order directing Respondent to pay child support. Exhibit A, pp 143-149.

12. Respondent received Food Assistance Program (FAP) benefits totaling \$6,069 from January 1, 2016, through May 31, 2017. Exhibit A, pp 12-14.
13. On March 20, 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$2,771 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 March 20, 2018, 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.

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 (January 1, 2018), 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 persons in the home. Department of Human Services Bridges Assistance Manual (BAM) 105 (January 1, 2018), pp 1-20.

FAP group composition is established by determining who lives together, the relationship of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the persons resides in an eligible living situation. Department of Human Services Bridges Eligibility Manual (BEM) 212 (January 1, 2017), p 1.

When a child spends time with multiple caretakers who do not live together such as joint physical custody, parent/grandparent, etc., determine a primary caretaker. Only one person can be the primary caretaker and the other caretaker(s) is considered the absent care-taker(s). The child is always in the FAP group of the primary care-taker. If the child spends virtually half of the days in each month, averaged over a twelve-month period with each caretaker, the caretaker who applies and is found eligible first, is the primary caretaker. BEM 212, pp 3-4.

On an application for assistance dated [REDACTED], 2016, Respondent acknowledged the duty to report persons in her household. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Respondent received FAP benefits as a group of two totaling \$6,069 from January 1, 2016, through May 31, 2017.

On [REDACTED], 2016, Respondent reported to the Department that her household consisted of herself and her daughter. On May 30, 2016, Respondent reported that there had been no changes to her household composition. On June 5, 2017,

Respondent reported that her household consisted of herself and her daughter. On July 31, 2017, Respondent reported that her household consisted of only herself.

The Department's representative argued that Respondent's [REDACTED], 2016, application for assistance was fraudulent and that Respondent does not meet the definition of her daughter's primary caretaker. A child is considered to be a member of the household with the primary caretaker per BEM 212, and there can be only one primary caretaker. The Department's representative testified that Respondent's daughter slept in her home less than half of the nights each month and should not have been included in Respondent's FAP benefit group. This determination relies heavily on hearsay statements made by the child's father to a Department investigator.

On November 19, 2015, the 44th Judicial Circuit Court of Livingston County issued a Uniform Child Support order directing Respondent to pay child support. On December 17, 2015, the 44th Circuit Court of Livingston County issued a Consent Order Regarding Custody, Parenting Time, and Child Support. This order established that Respondent and her daughter's father would have parenting time on alternate weeks during the school year. No evidence was presented on the record that the daughter, age 2 at that time, was enrolled in school, but the evidence supports a finding that this arrangement for parenting time continued through May 31, 2017.

None of the documents entered into the hearing record indicate that Respondent reported the number of days her daughter slept in her home on average each month. The hearing record does support a finding that Respondent had entered into a joint custody arrangement over her daughter. Therefore, if the number of days Respondent's daughter slept in Respondent's home was less than 50% of the days in a month, that it was due to a mistake. Since the number of days that the daughter slept in Respondent's home was not reported on the application documents, the evidence does not support a finding that the number of days actually spent in Respondent's home was fraudulently reported.

The Department failed to offer testimony of a witness with personal knowledge of the parenting time spent with Respondent's daughter. No sworn affidavits or signed statements of any witnesses were offered as evidence in this case. The Department's representative testified that the every other week arrangement was not being followed from January 1, 2016, through May 31, 2017, but provided no evidence on the record of the actual parenting time during that period. Further, no evidence that Respondent did not apply for FAP benefits before the daughter's father, or that the father had ever applied for FAP benefits during the relevant period.

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 273.16(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.*

This Administrative Law Judge finds that the Department has not presented clear and convincing evidence that Respondent intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination. The evidence supports a finding that there was a joint custody arrangement in place from January 1, 2016, through May 31, 2017. The Department alleges that the terms of that arrangement were not being followed but provided no objective evidence of where Respondent's daughter slept each night during that period. The evidence supports a finding that Respondent was a child support payor, but this is insufficient to establish that Respondent was not the primary caretaker.

The Department has not 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 not established by clear and convincing evidence that Respondent committed an IPV.
2. The Department is ORDERED to delete the OI and cease any recoupment action.

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

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

DHHS

Pam Assemany
220 Fort St.
Port Huron, MI 48060

St. Clair County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Respondent

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