



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: September 7, 2018
MAHS Docket No.: 18-004283
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 July 5, 2018, was adjourned on June 27, 2018. After due notice, a telephone hearing was held on August 7, 2018, from Lansing, Michigan. The Department was represented by Kelvin Christian and Maria Walters, Regulation Agent of the Office of Inspector General (OIG). Respondent represented himself and his wife, [REDACTED] testified on his behalf.

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. Department records indicate that Respondent was listed as a household member on an application for assistance dated [REDACTED], 2013. Exhibit A, p 13.
2. Respondent was an ongoing Food Assistance Program (FAP) recipient on October 21, 2013, when he reported to the Department that he was separated

from his wife since August of 2013, after the Department had requested verification of Respondent's unemployment benefits. Exhibit A, p 13.

3. On a Redetermination (DHS-1010) form received by the Department on August 18, 2014, Respondent acknowledged his duties and responsibilities including the duty to report persons living in his 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 14-19.
4. Respondent acknowledged under penalties of perjury that his August 18, 2014, redetermination form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Exhibit A, p 19.
5. Respondent reported to the Department on his August 18, 2014, Redetermination form that his wife had left his household on October 1, 2013. Exhibit A, p 17.
6. On February 28, 2015, Respondent's wife applied for State Emergency Relief (SER) benefits requesting assistance with utility expense obligations for her home located at [REDACTED] Michigan. Exhibit A, pp 20-33.
7. On a Redetermination (DHS-1010) form received by the Department on September 6, 2015, Respondent acknowledged his duties and responsibilities including his duty to report persons living in his 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 34-39.
8. Respondent acknowledged under penalties of perjury that his September 6, 2015, redetermination form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Exhibit A, p 39.
9. On his September 6, 2015, Redetermination form, Respondent reported that he was separated from his wife. Exhibit A, p 35.
10. The September 6, 2015, Redetermination form had been mailed to [REDACTED], Detroit, Michigan on August 17, 2015. Exhibit A, p 34.
11. On December 1, 2016, Respondent signed an affidavit where he disclosed to the Department that he has been living with his wife at [REDACTED], Michigan, and expressed a willingness to repay any overissued Food Assistance Program (FAP) benefits he received. Exhibit A, pp 40-43.
12. Respondent received Food Assistance Program (FAP) benefits from January of 2014, through September of 2016. Exhibit A, pp 44-49.
13. Respondent's wife received Food Assistance Program (FAP) benefits from January of 2014, through September of 2016. Exhibit A, pp 50-58.

14. On April 19, 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$1,023 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-8.
15. The Department's OIG filed a hearing request on April 19, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
16. This was Respondent's first established IPV.
17. 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 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 living in the household. Department of Human Services Bridges Assistance Manual (BAM) 105 (January 1, 2018), pp 1-20.

Department records support a finding that at some point in 2013, Respondent and his wife had been living together in the same household and that they had been placed in the same benefit group.

Respondent reported on a Redetermination (DHS-1010) form received by the Department on August 18, 2014, that his wife had left his home on October 1, 2013. Respondent acknowledged under penalties of perjury that his August 18, 2014, redetermination form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Respondent reported on his August 18, 2014, Redetermination form that he had separated from his wife.

On an application for SER benefits received on February 28, 2015, Respondent's wife reported to the Department that Respondent had moved out on October 1, 2015. Respondent's wife reported to the Department that she lived at [REDACTED], Michigan, on her February 28, 2015, application for SER benefits. Respondent had been listed as a household member of his wife's benefit group until the Department requested verification of Respondent's unemployment benefits and she reported a separation.

Respondent reported that his wife was not living in his household on a Redetermination form received by the Department on September 6, 2015. This form had been mailed to [REDACTED], Michigan.

Respondent was a Food Assistance Program (FAP) recipient as a group of one from January 1, 2014, through September 30, 2016. Respondent's wife received FAP benefits as a group of one from January 1, 2014, through September 30, 2016.

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. Spouses who are legally married and live together must be in the same FAP group. Living with means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. Persons who share only an access area such as an entrance or hallway or non-living area such as a laundry room are not considered living together. Department of Human Services Bridges Eligibility Manual (BEM) 212 (January 1, 2017), pp 1-2.

Spouses must be included in the same household and must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so. 7 CFR 273(b).

Respondent claims to have moved out of his wife's home located at [REDACTED], Michigan on October 1, 2014, after their separation, but that he continued to use his wife's home as his mailing address. Respondent's wife, a FAP recipient, claims that she was living alone at [REDACTED] after Respondent moved out on October 1, 2014. No evidence of a separate physical address for Respondent after October 1, 2014, was presented during the hearing.

On December 1, 2016, Respondent signed an affidavit where he disclosed that he had been living at [REDACTED], Michigan for 2 to 3 years. Respondent also agreed to take responsibility for any overissuance of FAP benefits on the December 1, 2016, affidavit.

Respondent testified that the statements contained in the December 1, 2016, affidavit are not truthful but that he was coerced into making those statements by the Department's investigator. Respondent offered no evidence that he had been coerced other than his own testimony.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), cert den, 318 US 783 (1943).

This Administrative Law Judge finds Respondent's prior inconsistent statement to be more reliable than his testimony during the hearing. Respondent's August 18, 2014, Redetermination form indicates that this wife moved out of their home located at 705 Atkinson, Detroit, Michigan and his wife's February 28, 2015, application for SER benefits indicates that he had moved out. Both of these signed statements offered

under penalties of perjury cannot be true. Further, if Respondent was using [REDACTED] Michigan solely as a mailing address, no evidence of where he was living was presented on the record.

Therefore, this Administrative Law Judge finds that Respondent was living in the same residence as his wife and Department policy requires that they be placed in the same FAP benefit group as if they were purchasing and preparing food together.

Respondent and his wife received FAP benefits totaling \$6,357 and would have been eligible for FAP benefits totaling \$5,334 if they had accurately reported their circumstances. Therefore, the household, including Respondent, as defined in BEM 212 and 7 CFR 273.1, is responsible for a FAP overissuance of \$1,023.

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 273.16(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.*

Respondent and his wife each reported to the Department that they had separated, and they continued to receive benefits separately. The evidence supports a finding that Respondent and his wife were “living together” as defined by BEM 212, and as a result, the household received FAP benefits that they were not eligible for.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally gave incomplete or inaccurate information to the Department, that he and his wife were no longer living together, for the purpose of receiving 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.

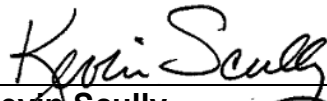
The Department has established an Intentional Program Violation (IPV).

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 \$1,023.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$1,023 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

Clarence Collins
12140 Joseph Campau
Hamtramck, MI 48212

Wayne County (District 55), 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]