



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

ORLENE HAWKS  
DIRECTOR

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Date Mailed:  
MAHS Docket No.: 18-009445  
Agency No.: ██████████  
Petitioner: OIG  
Respondent: ██████████

**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 December 12, 2018, from Lansing, Michigan. The Department was represented by Maria Williams, 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 the 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 ██████████ ██████████ 2016, Respondent acknowledged his duties and responsibilities including the duty to report the drug-related felony convictions of group members. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 12-31.

2. Respondent acknowledged under penalties of perjury that his [REDACTED] [REDACTED] 2016, application 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 31.
3. Respondent reported on his [REDACTED] [REDACTED] 2016, application for assistance that he had been convicted of one felony involving controlled substances but denied having two or more felony convictions involving controlled substances. Exhibit A, p 29.
4. On November 6, 2014, Respondent was sentenced for Delivery/Manufacture of Marijuana for an August 10, 2011, offense date. Exhibit A, pp 37-38.
5. On November 18, 2014, the 6th Judicial Circuit Court issued a Judgment of Sentence Commitment to Jail after Respondent pled no contest to Delivery/Manufacture of Marijuana. Exhibit A, pp 35-36.
6. On September 22, 2011, Respondent was sentenced for Delivery/Manufacture of Marijuana for an offense also occurring on August 10, 2011. Exhibit A, p 38.
7. On September 22, 2011, the 6th Judicial Circuit Court issued a Judgment of Sentence Commitment to Jail after Respondent pled no contest to Delivery/Manufacture of Marijuana. Exhibit A, pp 33-34.
8. Respondent received Food Assistance Program (FAP) benefits totaling \$2,370 from March 30, 2016, through September 30, 2017. Exhibit A, pp 39-41.
9. On August 30, 2018, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$2,370 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, p 6-9.
10. The Department's OIG filed a hearing request on August 30, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
11. This was Respondent's first established IPV.
12. A Notice of Hearing was mailed to Respondent at the last known address and was 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 (October 1, 2017), 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 (October 1, 2018), p 1.

An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both convictions were for conduct which occurred after August 22, 1996. Department of Health and Human Services Bridges Eligibility Manual (BEM) 203 (May 1, 2018), p 4.

On March 30, 2016 Respondent acknowledged his duties and responsibilities including his duty to report any convictions for felony offenses involving controlled substances

where the offenses occurred after August 22, 1996. 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 his March 30, 2016, application 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 March 30, 2016, application for assistance that he had been convicted of one felony involving controlled substances.

Respondent disclosed to the Department that he had been convicted of one felony involving controlled substances. A person remains eligible for FAP benefits with one felony conviction involving controlled substances so long as an authorized representative is selected.

The record evidence supports a finding that Respondent has two felony convictions involving controlled substances but that those two offenses were for conduct occurring in the same period or date. Whether or not Respondent selected an authorized representative in this case, the record of evidence does not establish that he received FAP benefits that he was not eligible to receive.

Therefore, the Department has failed to establish that Respondent received an 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 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 the 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.*

Since the record does not establish that Respondent has two or more felony convictions involving controlled substances involving two separate offenses occurring after August 22, 1996, and Respondent disclosed having one felony conviction on his application for assistance, the Department has failed to establish that Respondent intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination.

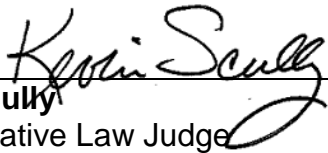
The Department has not established an Intentional Program Violation (IPV).

### **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 **DID NOT** establish by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **DID NOT** receive an OI of Food Assistance Program (FAP) benefits.
3. The Department is **ORDERED** to delete the OI and cease any recoupment action.

KS/dh

  
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**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**

Renee Swiercz  
51111 Woodward Ave 5th Floor  
Pontiac, MI 48342

Oakland County (District 4)

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

**Respondent**

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