



STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

DAVID GEIGER
4038 SILVER VALLEY DRIVE
ORION, MI 48359-1651

Date Mailed: April 18, 2019
MAHS Docket No.: 18-011268
Agency No.: 101977868
Petitioner: OIG
Respondent: David Geiger

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 March 19, 2019, from Lansing, Michigan. The Department was represented by Dawn O'Dell, Regulation Agent of the Office of Inspector General (OIG). Respondent appeared at the hearing and represented himself.

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] [REDACTED] 2014, Respondent acknowledged his duties and responsibilities including the duty to report all countable household 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 12-52.

2. Respondent acknowledged under penalties of perjury that his [REDACTED] [REDACTED] 2014, application was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Exhibit A, p 33.
3. Respondent reported on his [REDACTED] [REDACTED] 2014, application for assistance that he was receiving Supplemental Security Income (SSI) in the gross monthly amount of \$2,157, but did not report any other social security benefits being received in his household. Exhibit A, p 27.
4. Department records indicate that Respondent was approved for Food Assistance Program (FAP) benefits effective [REDACTED] [REDACTED] 2014, after the SOLQ and CI reports were reviewed. Exhibit A, p 54.
5. Two of Respondent's children received Retirement, Survivors, and Disability Insurance (RSDI) benefits from November 12, 2014, through May 11, 2016, and they each received a lump sum payment on September 30, 2014. Exhibit A, pp 55-56.
6. Respondent received Food Assistance Program (FAP) benefits totaling \$4,168 from November 1, 2014, through October 31, 2015. Exhibit A, pp 57-58.
7. On November 8, 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$3,228 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-9.
8. The Department's OIG filed a hearing request on November 8, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
9. This was Respondent's first established IPV.
10. 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 starting unearned income. Department of Human Services Bridges Assistance Manual (BAM) 105 (January 1, 2018), pp 1-20.

On an application for assistance dated [REDACTED] [REDACTED] 2014, Respondent acknowledged the duty to report all household income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Respondent applied for FAP benefits on [REDACTED] [REDACTED] 2014, and reported that he was receiving SSI benefits, but the evidence supports a finding that he was actually receiving RSDI benefits. The evidence supports a finding that two of his children began receiving regular RSDI payments in November 12, 2014, and received a lump sum

payment before that. Department records indicate that SOLQ and CI reports were reviewed before finding Respondent eligible for FAP benefits effective [REDACTED] 2014, but it is not clear how the children's unearned income would not have been discovered unless that information did not appear in the report on or around October 23, 2014. Therefore, it is not clear that Respondent's household had received the lump sum RSDI benefits before or after October 23, 2014, or that Respondent reported false information to the Department on October 23, 2014.

However, the record clearly establishes that Respondent received FAP benefits totaling \$4,168 from November 1, 2014, through October 31, 2015. The record also clearly establishes that the RSDI received by Respondent's children from November 1, 2014, through October 31, 2015, was not applied towards his eligibility for FAP benefits during that period and that he would have been eligible for FAP benefits totaling \$940 during that period if that unearned income had been considered. Therefore, Respondent received a \$3,228 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 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 the duties and responsibilities of receiving FAP benefits on an application for assistance dated [REDACTED] 2014. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent received an overissuance of FAP benefits due to household income that was not considered when determining his eligibility for FAP benefits. The hearing record does not constitute clear and convincing evidence that Respondent reported false information to the Department, or that the income received by Respondent's children was not discoverable by the Department. Therefore, this Administrative Law Judge finds that the Department has failed to establish an intentional program violation (IPV) by clear and convincing evidence.

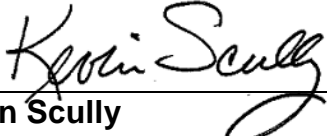
The Department **HAS NOT** established an Intentional Program Violation (IPV).

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. Respondent **DID** receive an OI of Food Assistance Program (FAP) benefits in the amount of \$3,228.
3. The Department is **ORDERED** to initiate recoupment procedures for the amount of \$3,228 in accordance with Department policy.

KS/dh



Kevin Scully
Administrative Law Judge
for Robert Gordon, 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), DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Respondent

[REDACTED]
MI [REDACTED]