



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

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Date Mailed: March 21, 2019
MAHS Docket No.: 18-011371
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 February 26, 2019, from Lansing, Michigan. The Department was represented by Christine Smolinski, 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 ██████████ ██████████ 2010, Respondent was named a limited co-guardian of his minor grandson. Exhibit A, p 134.
2. On ██████████ ██████████ 2011, Respondent was discharged as limited co-guardian of his minor grandson. Exhibit A, p 135.

3. On an application for assistance dated [REDACTED] [REDACTED] 2016, Respondent acknowledged his duties and responsibilities including the duty to report the people 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 12-28.
4. 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 27.
5. Respondent reported on his [REDACTED] [REDACTED] 2016, application for assistance that his minor grandson was living in his household four days each month. Exhibit A, pp 17.
6. On February 12, 2016, the Department notified Respondent that he was approved for Food Assistance Program (FAP) benefits as a group of four including his minor grandson. Exhibit A, pp 108-111.
7. On an application for assistance dated [REDACTED] [REDACTED] 2016, Respondent acknowledged his duties and responsibilities including the duty to report the people 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 29-48.
8. Respondent acknowledged under penalties of perjury that his November 10, 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 47.
9. Respondent reported on his [REDACTED] [REDACTED] 2016, application for assistance that his minor grandson was living in his home 31 days each month. Exhibit A, pp 34.
10. On an application for assistance dated [REDACTED] [REDACTED] 2016, Respondent acknowledged his duties and responsibilities including the duty to report the people 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 49-69.
11. 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 68.
12. Respondent reported on his [REDACTED] [REDACTED] 2016, application for assistance that his grandson was living in his household 30 days each month. Exhibit A, pp 55.

13. On December 3, 2016, the Department notified Respondent that he was approved for Food Assistance Program (FAP) benefits as a group of four including his minor grandson. Exhibit A, pp 112-116.
14. On an application for assistance dated [REDACTED] [REDACTED] 2016, Respondent acknowledged his duties and responsibilities including the duty to report the people 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 70-91.
15. 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 90.
16. Respondent reported on his [REDACTED] [REDACTED] 2016, application for assistance that his minor grandson was living in his household 31 days each month. Exhibit A, p 75.
17. On a Redetermination (DHS-1010) form received by the Department on [REDACTED] [REDACTED] 2017, Respondent acknowledged his duties and responsibilities including the duty to report the people 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 92-99.
18. Respondent acknowledged under penalties of perjury that his [REDACTED] [REDACTED] 2017, Redetermination (DHS-1010) 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 98.
19. Respondent reported on his [REDACTED] [REDACTED] 2017, Redetermination (DHS-1010) form that his minor grandson was living in his household 30 days each month. Exhibit A, p 93.
20. On J [REDACTED], 2017, the Department notified Respondent that he was approved for Food Assistance Program (FAP) benefits as a group of four including his minor grandson. Exhibit A, pp 117-120.
21. On a Redetermination (DHS-1010) form received by the Department on [REDACTED] [REDACTED] 2017, Respondent acknowledged his duties and responsibilities including the duty to report the people 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, p 101.
22. Respondent acknowledged under penalties of perjury that his [REDACTED] [REDACTED] 2017, Redetermination (DHS-1010) 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 106.

23. Respondent reported on his [REDACTED] [REDACTED] 2017, Redetermination (DHS-1010) form that his minor grandson was living in household 30 days each month. Exhibit A, p 101.
24. On June 26, 2017, the Department notified Respondent that he was approved for Food Assistance Program (FAP) benefits as a group of four including his minor grandson. Exhibit A, pp 121-124.
25. Respondent received Food Assistance Program (FAP) benefits totaling \$4,277 from December 1, 2016, through July 31, 2017. Exhibit A, pp 138-139.
26. On October 26, 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$2,533 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-9.
27. The Department's OIG filed a hearing request on October 26, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
28. This was Respondent's first established IPV.
29. 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 in the home. Department of Human Services Bridges Assistance Manual (BAM) 105 (January 1, 2018), pp 1-20.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (January 1, 2018), p 12. The Department will act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change, except that the Department will act on a change other than a tape match within 10 days of becoming aware of the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (January 1, 2018), p 7. A pending negative action occurs when a negative action

requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p 12.

On [REDACTED] [REDACTED] 2010, Respondent was named a limited co-guardian of his minor grandson. On [REDACTED] [REDACTED] 2011, Respondent was discharged as limited co-guardian of his minor grandson.

On an application for assistance dated [REDACTED] [REDACTED] 2018, Respondent acknowledged his duties and responsibilities including the people living his household. 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 [REDACTED] [REDACTED] 2018, 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 February 8, 2016, application for assistance that his minor grandson was living in his household 4 days each month. On February 12, 2016, the Department notified Respondent that he was approved for FAP benefits as a group of four including his minor grandson.

On an application for assistance dated [REDACTED] [REDACTED] 2016, Respondent acknowledged his duties and responsibilities including the people living his household. 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 [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. Respondent reported on his [REDACTED] [REDACTED] 2016, application for assistance that his minor grandson was living in his household 31 days each month.

On an application for assistance dated [REDACTED] [REDACTED] 2016, Respondent acknowledged his duties and responsibilities including the people living his household. 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 [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. Respondent reported on his [REDACTED] [REDACTED] 2016, application for assistance that his minor grandson was living in his household 30 days each month. On [REDACTED] [REDACTED] 2016, the Department notified Respondent that he was approved for FAP benefits as a group of four including his minor grandson.

On an application for assistance dated [REDACTED] [REDACTED] 2016, Respondent acknowledged his duties and responsibilities including the people living his household. 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 [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. Respondent reported on his [REDACTED] [REDACTED] 2016, application for assistance that his minor grandson was living in his household 31 days each month.

On a Redetermination (DHS-1010) form received by the Department on [REDACTED] [REDACTED] 2017, Respondent acknowledged his duties and responsibilities including the people living his household. 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 [REDACTED] [REDACTED] 2017, 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 [REDACTED], 2017, application for assistance that his minor grandson was living in his household 30 days each month. On January 31, 2017, the Department notified Respondent that he was approved for FAP benefits as a group of four including his minor grandson.

On a Redetermination (DHS-1010) form received by the Department on [REDACTED] [REDACTED] 2017, Respondent acknowledged his duties and responsibilities including the people living his household. 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 [REDACTED] [REDACTED] 2017, 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 [REDACTED] [REDACTED] 2017, application for assistance that his minor grandson was living in his household 30 days each month.

On June 28, 2017, the Department notified Respondent that he was approved for FAP benefits as a group of four including his grandson.

The record evidence supports a finding that Respondent's grandson was spending home time in Respondent's household from February 8, 2016, through July 31, 2017. No evidence was presented on the record that the parents of Respondent's grandson applied for or were receiving FAP benefits during that period. Department policy requires that a child be placed in the benefit group of the primary caretaker, which is based on where the child sleeps more often, but does not specify how to determine the primary caretaker when a caretaker does not apply for or otherwise qualify for FAP benefits. See Department of Health and Human Services Bridges Eligibility Manual (BEM) 212 (January 1, 2017).

The Department is not disputing whether Respondent was eligible for FAP benefits as a group of four as of February 8, 2016, when Respondent reported that his grandson was sleeping in his home 4 days each month.

However, on November 10, 2016, Respondent reported to the Department that his grandson was sleeping in his home 31 days each month, and continued to claim that his grandson was sleeping in his home full time through July 31, 2017. The Department is required to accept client statements of where a child sleeps when determining the primary caretaker by BEM 212 unless that information is disputed. No evidence was presented on the record that this information was disputed when Respondent applied for benefits, but the evidence does not support a finding that the grandson was living in Respondent's home all of the time.

Based on the evidence and testimony available during the hearing, this Administrative Law Judge finds that Respondent's grandson was not living in his home for the majority of days in each month and Respondent should not have been designated as the primary caretaker of the grandson. The evidence supports a finding that Respondent was designated as the primary caretaker based on client statements where Respondent reported that the grandson was sleeping in his home for the entire month on each application for assistance submitted after November 10, 2016.

Respondent received FAP benefits totaling \$4,277 from December 1, 2016, through July 31, 2017, as a group of four. If Respondent had truthfully reported where his grandson was sleeping, he would have been eligible for FAP benefits totaling \$1,744 as a group of three. Therefore, Respondent received a \$2,533 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 assistance. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. On November 10, 2016, Respondent began reported to the Department that his grandson was sleeping in his household every night for the entire month. The evidence supports a finding that these statements were not true, but as a result of these statements, Respondent received an overissuance of FAP benefits.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally reported that his grandson was sleeping in his home full time in order to be designated as the primary caretaker of his grandson, and thereby received 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, pp 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.

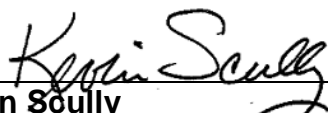
The Department has established an Intentional Program Violation (IPV).

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 \$2,533.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$2,533 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/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

Pam Assemany
220 Fort St.
Port Huron, MI 48060

St. Clair County, DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Respondent

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