



STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

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

Date Mailed: March 22, 2019
MAHS Docket No.: 18-011479
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. After due notice, telephone hearing was held on February 26, 2019, from Lansing, Michigan. The Department was represented by Russ Mathiew, 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 the duties and responsibilities of receiving Food Assistance Program (FAP) benefits. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 9-21.

2. Respondent's Food Assistance Program (FAP) benefits closed effective August 1, 2017, for failure to participate in a required eligibility interview. Department records indicate that that interview was scheduled as an in-person interview due to concerns that Respondent might not live in Michigan. Exhibit A, p 44.
3. On an application for assistance dated [REDACTED] [REDACTED] 2017, Respondent reported that he was living in Michigan. Exhibit A, pp 30-42.
4. Respondent acknowledged the duties and responsibilities of receiving Food Assistance Program (FAP) benefits on his [REDACTED], 2017, application for assistance.
5. Respondent acknowledged under penalties of perjury that his [REDACTED], 2017, 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, pp 30-42.
6. Department records indicate that during an eligibility interview on or around [REDACTED], 2017, Respondent reported having an unstable home life. This interview was conducted by a Department employee in St. Joseph County, although his September 28, 2017, application indicated that he lived in Calhoun County. Exhibit A, p 43.
7. Respondent's [REDACTED], 2017, application for Food Assistance Program (FAP) was approved with prorated benefits in September of 2017, and no benefits granted in August of 2017. Exhibit A, p 46.
8. Respondent starting using Food Assistance Program (FAP) benefits in Alabama on January 22, 2017, and used them exclusively outside Michigan through November 26, 2017. Exhibit A, pp 22-27.
9. Respondent used his Food Assistance Program (FAP) benefits to make two purchases in Alabama on September 29, 2017. Exhibit A, p 26.
10. Respondent failed to report being employed and receiving earned income from March 24, 2017, through April 21, 2017, while reporting a Tennessee address to his employer. Exhibit A, pp 28-20.
11. Respondent received Food Assistance Program (FAP) benefits totaling \$1,373 from March 1, 2017, through November 30, 2017. Exhibit A, pp 46.
12. On October 31, 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$1,373 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 4-7.

13. The Department's OIG filed a hearing request on October 30, 2017, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
14. This was Respondent's first established IPV.
15. 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.

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.

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.

To be eligible for FAP benefits, a person must be a Michigan resident. A person is considered a resident under the FAP while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (April 1, 2018), pp 1-2. The Department is prohibited from imposing any durational residency requirements on the eligibility for FAP benefits. 7 CFR 273.3(a).

State agencies must adopt uniform standards to facilitate interoperability and portability nationwide. The term “interoperability” means the EBT system must enable benefits issued in the form of an EBT card to be redeemed in any state. 7 CFR 274.8(b)(10).

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 pended 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 an application for assistance dated [REDACTED], 2016, Respondent acknowledged the duties and responsibilities of receiving FAP benefits. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent claimed to be living in [REDACTED]. Respondent received FAP benefits until [REDACTED], 2017, when his benefits closed for failure to participate in an in-person interview and the Department's suspicion that he was not living in Michigan.

On [REDACTED], 2017, the Department received another application for assistance. Respondent acknowledged under penalties of perjury that his [REDACTED], 2017, 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 to the Department that he was homeless, that his county of residence was [REDACTED], and provided a [REDACTED] mailing address. The required eligibility interview was conducted by a St. Joseph County employee. Respondent reported to the Department that he was homeless and had an unstable home life.

Respondent began using his FAP benefits outside Michigan on January 22, 2017, and used them exclusively outside Michigan through November 26, 2017. Respondent had reported that he was living in a homeless shelter when he applied for FAP benefits on his [REDACTED], 2017, application form. Respondent used his FAP benefits in Alabama the day after his [REDACTED], 2017, eligibility interview where he claimed to be living in Michigan.

Respondent had failed to report receiving earned income from March 24, 2017, through April 21, 2017, while reporting a Tennessee address to his employer. During that period, Respondent was using his FAP benefits in Tennessee.

The evidence supports a finding that Respondent left Michigan on or around January 22, 2017, from his use of FAP benefits exclusively outside Michigan. The evidence supports a finding that Respondent used his FAP benefits in Tennessee, and that while in Tennessee, he received earned income from employment that was not reported to the Department. Respondent then failed attend an in-person eligibility interview, which had been scheduled due to suspicions that he was not living in Michigan. Respondent reapplied for FAP benefits after they closed in August of 2017, and his application was approved after managing to get a telephone interview in another county than the county listed as his residence county on the application for assistance. Respondent was approved for expedited FAP benefits, and then used his FAP benefits in Alabama the day after his telephone eligibility interview.

The record evidence that Respondent intentionally gave incomplete or inaccurate information during his [REDACTED], 2017, eligibility interview when he claimed to be living in Michigan. Respondent gave reasons for failing to attend a scheduled in-person interview in Calhoun County, but if he was temporarily out of Michigan during that interview, he failed to report that information to the Department.

Respondent's history of claiming to live in one county while providing a mailing address for another county and failure to attend in-person interviews in Michigan, during a period where he exclusively used FAP benefits outside Michigan, constitutes clear and convincing evidence of Respondent intentionally concealing that he was not living in Michigan. No evidence was presented on the record that Respondent had temporarily travelled to Alabama in January of 2017. Although Respondent was not under any duty to report being in Alabama temporarily, his failure to report being absent from Michigan while missing in-person interviews supports a finding that he intentionally concealed his absence from Michigan.

Respondent was not eligible for any FAP benefits while he was not living in Michigan. If Respondent had reported that he was not living in Michigan in a timely manner, the Department would have closed his FAP benefits by March 1, 2017. Respondent received FAP benefits totaling \$1,373 from March 1, 2017, through November 30, 2017, and he was not eligible for any of those benefits. Therefore, Respondent received a \$1,373 overissuance of FAP benefits.

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 applications for assistance date [REDACTED], 2016, and [REDACTED] 8, 2017. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent reported that he was living in Michigan. Respondent's conduct supports a finding that he was not living in Michigan, did not intend to remain a Michigan, and that he concealed that he was living outside Michigan for the purposes of becoming eligible for Michigan FAP benefits that he would not have been eligible for otherwise.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally concealed that he was not living in Michigan after being instructed of his responsibilities to report his circumstances for the purposes of becoming eligible for FAP benefits.

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 \$1,373.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$1,373 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

DHHS

Carisa Drake
190 East Michigan
Battle Creek, MI 49016

Calhoun County, DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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