



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

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Date Mailed: April 23, 2019
MOAHR Docket No.: 18-011600
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 March 20, 2019, from Lansing, Michigan. The Department was represented by Dana Daniels, 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. Respondent reported on a Redetermination (DHS-1010) form received by the Department on ██████████ ██████████ 2015, that her only source of income was for providing child care. Exhibit A, pp 11-16.

2. Respondent acknowledged under penalties of perjury that her [REDACTED] [REDACTED] 2015, Redetermination form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 16.
3. On an application for assistance dated [REDACTED] [REDACTED] 2015, Respondent acknowledged her duties and responsibilities including 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. Exhibit A, pp 19-30.
4. Respondent acknowledged under penalties of perjury that her [REDACTED] [REDACTED] 2015, application form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 30.
5. Respondent reported on her [REDACTED] [REDACTED] 2015, application that she was not employed, and her only income was from a pension. Exhibit A, pp 24-25.
6. On an application for assistance dated [REDACTED] [REDACTED] 2015, Respondent acknowledged her duties and responsibilities including the duty to report her 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 31-38.
7. Respondent acknowledged under penalties of perjury that her [REDACTED] [REDACTED] 2015, application form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 37.
8. Respondent reported on her [REDACTED] [REDACTED] 2015, application for assistance that her only income was for providing child care. Exhibit A, p 35.
9. On an application for assistance dated [REDACTED] [REDACTED] 2016, Respondent acknowledged her duties and responsibilities including the duty to report her 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 39-52.
10. Respondent acknowledged under penalties of perjury that her [REDACTED] [REDACTED] 2016, application form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 50.
11. Respondent reported on her [REDACTED] [REDACTED] 2016, application for assistance that she was receiving income for providing child care and a pension. Exhibit A, p 47.

12. On an application for assistance dated [REDACTED] [REDACTED] 2016, Respondent reported to the Department that she was receiving social security benefits. Exhibit A, pp 53-58.
13. Respondent received Food Assistance Program (FAP) benefits totaling \$2,134 from November 1, 2015, through September 30, 2016. Exhibit A, pp 17-18.
14. On November 7, 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$1,958 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-9.
15. The Department's OIG filed a hearing request on November 7, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
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 (October 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 all household income. Department of Human Services Bridges Assistance Manual (BAM) 105 (January 1, 2019), 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, 2019), 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.

Respondent was an ongoing FAP recipient on August 31, 2015, when she filed a Redetermination (DHS-1010) form reporting that her only source of income was for child care.

On applications for assistance dated [REDACTED] 2015, [REDACTED] 2015, and [REDACTED] 2016, Respondent acknowledged the duties and responsibilities of receiving FAP benefits including 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 acknowledged under penalties of perjury that her [REDACTED] 2015, application form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Respondent reported that her only source of income was from a pension. Respondent acknowledged under penalties of perjury that her [REDACTED] 2015, application form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Respondent reported that her only source of income was for child care. Respondent acknowledged under penalties of perjury that her [REDACTED] 2016, application form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Respondent reported that her only source of income was from a pension and from performing child care.

Respondent failed to report that she was receiving a monthly Retirement, Survivors, and Disability Insurance (RSDI) payment on [REDACTED] 2015, and in each month after that. If Respondent had reported her RSDI income in a timely manner, then the Department would have redetermined her eligibility for ongoing FAP benefits no later than the first benefit period after October 3, 2015. Respondent received FAP benefits totaling \$2,134 from November 1, 2015, through September 1, 2016. On September 28, 2016, Respondent disclosed to the Department that she was receiving RSDI benefits. If Respondent had reported her RSDI benefits in a timely manner, then she would have only been eligible for RSDI benefits totaling \$176 from November 1, 2015, through September 1, 2016. Therefore, Respondent received a \$1,958 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 applications for assistance dated [REDACTED] 2015, [REDACTED] 2015, and [REDACTED] 2016. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent failed to report that she was receiving RSDI benefits in a timely manner, which resulted in an overissuance of FAP benefits.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report her receipt of RSDI benefits in a timely manner for the purposes of maintaining her eligibility for FAP benefits that she 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 \$1,958.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$1,958 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

