



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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Date Mailed: June 5, 2019
MOAHR Docket No.: 18-012454
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. The hearing was adjourned on April 1, 2019. After due notice, telephone hearing was held on May 7, 2019, from Lansing, Michigan. The Department was represented by Thomas Malik, Regulation Agent of the Office of Inspector General (OIG). Respondent represented himself and ██████████ testified on her behalf.

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 a Redetermination (DHS-1010) form received by the Department on ██████████ 2016, Respondent acknowledged her duties and responsibilities including the duty to report changes of residency and the receipt of benefits from another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 11-18.

2. Respondent acknowledged under penalties of perjury that her [REDACTED] [REDACTED] 2016, Redetermination (DHS-1010) 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 17.
3. Respondent reported on her [REDACTED] [REDACTED] 2016, Redetermination form that she was living in Michigan. Exhibit A, pp 11.
4. Respondent used her Michigan Food Assistance Program (FAP) benefits exclusively in Ohio from June 5, 2017, through July 16, 2017. Exhibit A, p 19.
5. The Respondent received Food Assistance Program (FAP) benefits totaling \$920 from June 1, 2017, through October 31, 2017. Exhibit A, p 71.
6. On May 30, 2017, Respondent completed an application for food assistance with the state of Ohio. Exhibit A, p 27-58.
7. The Respondent received food assistance benefits from the state of Ohio from May 30, 2017, through April 30, 2018. Exhibit A, pp 25 and 59-60.
8. Respondent reported to the state of Ohio as part of her application for food assistance that she was living in Ohio. Exhibit A, p 33.
9. The Department's OIG filed a hearing request on November 28, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
10. On November 28, 2018, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$920 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-9.
11. This was Respondent's first established IPV.
12. 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 (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.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. Benefit duplication is prohibited except for MA and FAP in limited circumstances. Department of Health and Human Services Bridges Eligibility Manual (BEM) 222 (October 1, 2018), p 3.

An individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to received multiple SNAP benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years. 7 CFR 273(b)(5).

On an application for assistance dated [REDACTED] [REDACTED] 2016, the Department received Respondent's Redetermination (DHS-1010) where she acknowledged the duties and responsibilities of receiving FAP benefits, including the duty to report any change of residency as well as the receipt of concurrent food assistance from another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent reported on her [REDACTED] [REDACTED] 2016, application form that she was living in Michigan.

On May 30, 2017, Respondent applied for food assistance from the state of Ohio. After applying for Ohio food assistance, Respondent used her Michigan FAP benefits exclusively in Ohio from June 5, 2017, through July 15, 2017. Respondent was approved by the state of Ohio for food assistance and received Ohio food assistance from May 30, 2017, through April 30, 2018, without reporting these benefits to the Department.

Respondent received FAP benefits totaling \$920 from June 1, 2017, through October 31, 2017. Respondent was not eligible for any of those benefits because during each of those months she was concurrently receiving food assistance from the state of Ohio. Therefore, Respondent received a \$920 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.*

The Department received Respondent's Redetermination (DHS-1010) on [REDACTED] [REDACTED] 2016, where she acknowledged the duties of receiving FAP benefits, including the duty to report any change of residency and the receipt of food assistance from another state. 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] [REDACTED] 2016, redetermination form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Respondent reported to the Department on her [REDACTED] [REDACTED] 2016, Redetermination form that she was living in Michigan, and the evidence supports a finding that this was a truthful statement.

On May 30, 2017, Respondent applied for food assistance from the state of Ohio, and reported to the state of Ohio that she was living in Ohio. The evidence supports a finding that Respondent was in Ohio because she used her Michigan FAP benefits exclusively in Ohio from June 5, 2017, through July 15, 2017. Although Respondent did not report to the Department that she had applied for food assistance from Ohio as an Ohio resident, the evidence supports a finding that Respondent's declaration to be living in Ohio made on May 30, 2017, to be truthful.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that the Respondent intentionally failed to report her receipt of Ohio food assistance for the purposes of remaining eligible for Michigan 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 the disqualified person 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 (January 1, 2018), 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 Department has established an Intentional Program Violation (IPV).

A twelve-month disqualification from the Food Assistance Program (FAP) is appropriate in this case because Respondent did receive concurrent food assistance, but she did not make a fraudulent statement or representation with respect to identify or place of residence. Respondent had a duty to report to the Department that she had applied for food assistance from Ohio as an Ohio resident, but the evidence supports a finding that her declarations of residency made on [REDACTED] 2016, and May 30, 2017, were truthful when she made them. Respondent intentionally failed to report information necessary to make a correct benefit determination with respect to her eligibility for ongoing benefits, and an overissuance and IPV has been established, but a ten-year disqualification is not supported by the record evidence.

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, 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 \$920.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$920 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR 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 Farnsworth
903 Telegraph
Monroe, MI 48161

Monroe County, DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Respondent

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