



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: April 30, 2019  
MOAHR Docket No.: 18-012647  
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 April 9, 2019, from Lansing, Michigan. The Department was represented by Kelli Owens, 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 ██████ ██████ 2013, 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 11-43.

2. On an application for assistance dated [REDACTED] [REDACTED] 2014, 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 44-56.
3. Respondent acknowledged under penalties of perjury that her [REDACTED] [REDACTED] 2014, 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 56.
4. Respondent reported on her [REDACTED] [REDACTED] 2014, application for assistance that her employment with Detroit Medical Center had ended August 19, 2014, and that no one else in the household was employed. Exhibit A, pp 51.
5. Respondent failed to report the she continued to receive earned income from Detroit Medical Center. Exhibit A, pp 66-68.
6. On a Redetermination (DHS-1010) form received by the Department on [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 57-62.
7. Respondent acknowledged under penalties of perjury that her [REDACTED] [REDACTED] 2015, 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 62.
8. Respondent reported her June 29, 2015, Redetermination form that she had been employed at SODEXO since February 15, 2015. Exhibit A, pp 60.
9. Respondent received earned income from [REDACTED] from February 12, 2015, through November 19, 2015. Exhibit A, pp 63-65.
10. Respondent failed to report on her [REDACTED] [REDACTED] 2015, Redetermination form that she was receiving earned income from [REDACTED]. Exhibit A, pp 66-68.
11. Respondent received Food Assistance Program (FAP) totaling \$2,920 from December 1, 2014, through January 31, 2016. Exhibit A, pp 69-71.
12. On November 30, 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$2,733 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-9.
13. The Department's OIG filed a hearing request on November 30, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.

14. This was Respondent's first established IPV.
15. 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 all household income. 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 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.

Respondent acknowledged the duties and responsibilities of receiving FAP benefits on applications for assistance dated [REDACTED] [REDACTED] 2013, [REDACTED], 2014, and on a Redetermination (DHS-1010) form received by the Department on [REDACTED] [REDACTED] 2015. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. These duties and responsibilities included the duty to report all household income.

Respondent reported to the Department on [REDACTED], 2014, that her employment with [REDACTED] had ended on [REDACTED] [REDACTED] 2014. Respondent failed to report to the Department that she received earned income from [REDACTED] in September of 2014, from November of 2014, through January of 2015, and from July of 2015, through February of 2016.

Respondent failed to report starting employment with [REDACTED] on [REDACTED] [REDACTED] 2015, until the Department received her [REDACTED] [REDACTED] 2015, Redetermination form.

If Respondent had reported her earned income from Detroit Medical Center received in September of 2014, the Department would have redetermined her eligibility to receiving ongoing FAP benefits no later than December 1, 2014.

Respondent received a \$357 monthly allotment of FAP benefits from December 1, 2014, through February 28, 2015, which was the maximum allotment of FAP benefits available to a group of two. Department of Health and Human Services

Reference Table Manual (RFT) 260 (October 1, 2014), p 1. Respondent received these FAP benefits after failing to receive earned income from [REDACTED] that she had reported as ending on August 20, 2014.

If Respondent had reported starting employment with [REDACTED] on [REDACTED], 2015, and receiving earned income from February 12, 2015, through November 19, 2015, then the Department would have redetermined her eligibility to receive ongoing benefits by April 1, 2015.

Respondent continued to receive a \$357 monthly allotment of FAP benefits from April 1, 2015, through July 31, 2015, the maximum allotment for a group of two after failing to report receiving earned income from [REDACTED].

Respondent received a \$16 monthly allotment of FAP benefits from September 1, 2015, through December 31, 2015, presumably after reporting her employment with [REDACTED]. Respondent continued to receive unreported income from [REDACTED] during that period and her total gross monthly income exceed to limit to receive any FAP benefits during that period.

Respondent received a \$357 monthly allotment of FAP benefits in January of 2016, but would not have been eligible for any of those benefits if she had reported her ongoing earned income from [REDACTED].

Respondent received FAP benefits totaling \$2,920, but would have been eligible for \$187 if she had reported all of her earned income in a timely manner. Therefore, Respondent received a \$2,733 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] [REDACTED] 2013. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Respondent reported that her employment with [REDACTED] had ended, but failed to report that she continued to receive earned income from [REDACTED]. Respondent failed to report receiving earned income from [REDACTED] and [REDACTED] at the same time. As a result of Respondent's failure to report changes to her circumstances in a timely manner, she received 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 circumstances 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.

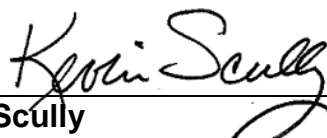
The Department has established an Intentional Program Violation (IPV).

**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 \$2,733.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$2,733 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

  
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**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 Office of Administrative Hearings and Rules  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**DHHS**

Montrece White  
27690 Van Dyke  
Warren, MI 48093

Macomb 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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