



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: May 13, 2019
MOAHR Docket No.: 18-013958
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 30, 2019, from Lansing, Michigan. The Department was represented by Amy Harrison, 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 the Department establish by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV)?
2. 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 ██████████ ██████████ 2016, 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 32-53.
2. Respondent ██████████ ██████████ 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 53.

3. Respondent reported on her [REDACTED] [REDACTED] 2016, application for Food Assistance Program (FAP) and State Emergency Relief (SER) benefits that no one in the household was employed after a member of the household was fired from his job. Exhibit A, pp 46 and 50.
4. 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 28-31.
5. Respondent acknowledged under penalties of perjury that her [REDACTED] [REDACTED] 2017, 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 38.
6. Respondent reported on her [REDACTED] [REDACTED] 2017, application for State Emergency Relief (SER) assistance that no one in the household was employed. Exhibit A, p 29.
7. On a State Emergency Relief (SER) application dated [REDACTED] [REDACTED] 2017, Respondent's husband acknowledged his duties and responsibilities including the duty to report all household income. Exhibit A, pp 24-27.
8. Respondent's husband acknowledged under penalties of perjury that his [REDACTED] [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, p 26.
9. Respondent's husband reported on his [REDACTED] [REDACTED] 2017, application for assistance that no one in the household was employed. Exhibit A, pp 25.
10. Respondent failed to report to the Department that her husband received paychecks in the gross amounts of [REDACTED]
[REDACTED]
[REDACTED]. Exhibit A, pp 21-23.
11. Respondent received Food Assistance Program (FAP) benefits totaling \$1,298 from March 1, 2017, through April 30, 2017. Exhibit A, p 15.
12. Respondent received State Emergency Relief (SER) benefits payable to the Hillsdale Board of Public Utilities totaling \$522.02 and paid on March 9, 2017. Exhibit A, p 14.

13. On December 28, 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$1,820.02 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-9.
14. The Department's OIG filed a hearing request on December 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.
15. This was Respondent's first established IPV.
16. 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 State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

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 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.

The SER budget computation period is 30 days. This is referred to as the countable income period. The first day of the countable income period is the date the local office receives a signed application for SER. For example, if the local office receives a signed application on November 16, the countable income period is November 16 through December 15. Department of Health and Human Services Emergency Relief Manual (ERM) 206 (February 1, 2017), p 1.

On [REDACTED] [REDACTED] 2016, the Department received Respondent's FAP and SER application. Respondent reported on this application form that her husband's

employment had ended. Respondent's husband had received a paycheck on November 10, 2016, but did not receive another paycheck until January 20, 2017.

On [REDACTED] [REDACTED] 2017, the Department received Respondent's SER application. Respondent reported on this application form that no one in the household was employed. Respondent's husband received a paycheck on January 20, 2017, in the gross bi-weekly amount of [REDACTED], and her husband would receive another paycheck on February 3, 2017, for a pay period ending on January 27, 2017, in the gross bi-weekly amount of [REDACTED]. The evidence supports a finding that Respondent knew that her husband was employed on January 23, 2017, and that she failed to report this on her application for SER benefits. As an ongoing FAP recipient applying for SER benefits, if Respondent would have reported her husband's January 20, 2017, paycheck in a timely manner, the Department would have redetermined her eligibility for ongoing FAP benefits by the first benefit period after February 21, 2017.

Respondent's husband continued to receive earned income and received earned income in the gross monthly amount of [REDACTED] in March of 2017, and [REDACTED] in April of 2017. The gross monthly income limit for a group of four was \$2,633. Therefore, Respondent was not eligible for any FAP benefits in March or April of 2017.

On April 17, 2018, the Department sent Respondent a Notice of Overissuance (DHS-4356-A) instructing her that a \$1,298 overissuance of FAP benefits would be recouped for the period of March 1, 2017, through April 30, 2017. No evidence was presented on the record that Respondent requested a hearing protesting the recoupment and the Department's representative testified that the debt has been established.

The Department's representative testified that Respondent and her household received an overissuance of SER benefits paid on March 9, 2017, and that this debt has been established.

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] 2016, 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 had reported that her husband's employment had ended, but failed to report when it resumed. As a result of the income that was not reported in a timely manner, Respondent 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 husband's earned income for the purposes of maintaining her eligibility for FAP benefits that she would not have been eligible for otherwise.

On [REDACTED] [REDACTED] 2017, the Department received an application for SER benefits signed by Respondent's husband. The hearing record does not establish that any information reported on the [REDACTED] [REDACTED] 2017, application form caused an overissuance of SER benefits. The SER benefits were issued on March 9, 2017, which was within the standard of promptness for the [REDACTED] [REDACTED] 2017, application.

No income was reported on the [REDACTED] [REDACTED] 2017, application form, but this application was signed by Respondent's husband. Although the adult members of the household are responsible for the overissuance, the evidence does not support a finding that Respondent intentionally failed to report her household's circumstances on the [REDACTED] [REDACTED] 2017, application form, or that she had acknowledged the duties and responsibilities of receiving SER benefits on the [REDACTED] [REDACTED] 2017, application form. Therefore, the Department has failed to establish that Respondent is responsible for an Intentional Program Violation (IPV) with respect to SER benefits.

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) for the Food Assistance Program (FAP) but has not established an IPV for the State Emergency Relief (SER) assistance.

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 with respect to the Food Assistance Program (FAP).
2. The Department **HAS NOT** established by clear and convincing evidence that Respondent committed an IPV with respect to State Emergency Relief (SER) assistance.
3. 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 Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

DHHS

Traci Croff
40 Care Drive
Hillsdale, MI 49242

Hillsdale County, DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Respondent

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