



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 12, 2019  
MOAHR Docket No.: 19-001540  
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 May 21, 2019, from Lansing, Michigan. The Department was represented by Monica Tardif, 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) and Medical Assistance (MA) 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 ██████████ ██████████ 2016, Respondent acknowledged the duties and responsibilities of receiving Food Assistance Program (FAP) and Medical Assistance (MA) 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 10-38.

2. Respondent acknowledged under penalties of perjury that his [REDACTED] [REDACTED] 2016, 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 20.
3. Respondent starting using Food Assistance Program (FAP) benefits in Texas on May 18, 2017, and used them exclusively in Texas through October 20, 2017. Exhibit A, pp 44-50.
4. Respondent received Food Assistance Program (FAP) benefits totaling \$774 from July 1, 2017, through October 31, 2017. Exhibit A, p 51.
5. Respondent received Medical Assistance (MA) with a value of \$1,225.28 from July 1, 2017, through October 31, 2017. Exhibit A, pp 52-57.
6. Respondent failed to report to the Department that he started employment on May 25, 2017, and received earned income from May 25, 2017, through October 5, 2017. Exhibit A, pp 39-42.
7. On January 22, 2019, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$1,999.28 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-8.
8. The Department's OIG filed a hearing request on January 22, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
9. This was Respondent's first established IPV.
10. 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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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). A Michigan resident is an individual who is living in Michigan except for a temporary absence. Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished. BEM 220, p 2.

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).

On an application for assistance dated [REDACTED] 2016, Respondent acknowledged the duties and responsibilities of receiving MA and FAP benefits. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent received FAP totaling \$774 from July 1, 2017, through October 31, 2017. Respondent also received MA benefits with a value of \$1,225.28 from July 1, 2017, through October 31, 2017.

The evidence supports a finding that Respondent received earned income that was not reported to the Department, but no evidence was presented to establish that this unreported income made him ineligible for any FAP or MA benefits.

Respondent began using FAP benefits in Texas on May 18, 2017, and used them exclusively in Texas through October 20, 2017. The evidence supports a finding that Respondent was in Texas, but no evidence was presented to establish the purpose of his visit to Texas. No evidence was presented on the record that Respondent did not intend to return to Michigan after the purpose of his visit to Texas was completed. No evidence was presented on the record that Respondent misrepresented his circumstances to the Department.

The Department is prohibited from establishing a durational requirement to establish Michigan residency, and has no authority to establish a durational requirement to lose Michigan residency. Federal regulations authorize FAP recipients to use their FAP benefits to make purchases in other states and the Department has failed to establish that Respondent was ineligible for those FAP benefits.

The Department has failed to establish an overissuance of FAP and MA benefits. The Department has failed to establish that Respondent failed to report information for which he had a duty to report, or that he gave incomplete or inaccurate information needed to make a correct benefit determination.

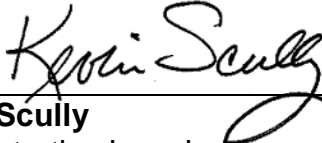
The Department has not established an Intentional Program Violation (IPV).

**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 not established by clear and convincing evidence that Respondent committed an IPV.
2. The Department is ORDERED to delete the OI and cease any recoupment action.

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**

Jeanette Cowens  
2524 Clark Street  
Detroit, MI 48209

Wayne County (District 41), 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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