



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: August 15, 2019  
MOAHR Docket No.: 19-002678  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**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. A hearing scheduled for June 20, 2019, was adjourned on June 24, 2019. After due notice, a telephone hearing was held on July 30, 2019, from Lansing, Michigan. The Department was represented by Shannon Davis, 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 Family Independence Program (FIP) and 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 Family Independence Program (FIP) and 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 [REDACTED] [REDACTED] 2016, Respondent acknowledged his duties and responsibilities including the

duty to report changes of employment status and increases of earned 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 12-16.

2. Respondent acknowledged under penalties of perjury that his [REDACTED] [REDACTED] 2016, Redetermination 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 16.
3. Respondent reported on his [REDACTED], 2016, Redetermination form that no one in the household was receiving earned income from employment. Exhibit A, p 14.
4. On an application for assistance dated [REDACTED], 2017, Respondent acknowledged his duties and responsibilities including the duty to report changes of employment status and increases of earned 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 17-70.
5. Respondent 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, pp 69-70.
6. Respondent reported on his [REDACTED] [REDACTED] 2017, application for assistance that no one in his household was receiving earned income from employment. Exhibit A, p 57.
7. On May 31, 2016, the Department notified Respondent that he was approved for Food Assistance Program (FAP) benefits as a group of nine receiving no earned income from employment. Exhibit A, pp 86-91.
8. On December 3, 2016, the Department notified Respondent that he was approved for ongoing Food Assistance Program (FAP) benefits as a group of nine receiving no earned income from employment. Exhibit A, pp 92-96.
9. On an application for assistance dated [REDACTED] [REDACTED] 2017, Respondent acknowledged his duties and responsibilities including the duty to report changes of employment status and increases of earned 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 71-85.
10. Respondent acknowledged under penalties of perjury that his May 31, 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 85.
11. Respondent reported on his [REDACTED] [REDACTED] 2017, application form that he was not employed. Exhibit A, p 79.

12. On June 22, 2017, the Department notified Respondent that he was approved for Food Assistance Program (FAP) benefits as a group of nine receiving no earned income from employment. Exhibit A, pp 97-104.
13. Employment data on file with the Michigan Unemployment Insurance Agency shows that Respondent failed to report being employed and receiving earned income from employment throughout the year 2017. Exhibit A, pp 105-107.
14. Respondent received Food Assistance Program (FAP) benefits totaling \$1,280 from March 1, 2017, through July 31, 2017. Exhibit A, pp 108-109.
15. Respondent received Family Independence Program (FIP) benefits totaling \$1,477.50 from June 16, 2017, through July 31, 2017. Exhibit A, p 127.
16. On March 4, 2019, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$2,741.50 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-9.
17. The Department's OIG filed a hearing request on March 4, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
18. The Department's representative testified that the debt of \$2,741.50 has already been established.
19. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

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 changes of employment status and the receipt of earned income from employment. 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.

On a Redetermination (DHS-1010) form received by the Department on [REDACTED] [REDACTED] 2016, and applications for assistance dated [REDACTED] [REDACTED] 2017, and [REDACTED] [REDACTED] 2017, Respondent acknowledged the duties and responsibilities of receiving FIP 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 acknowledged under penalties of perjury that each of his application and redetermination forms were examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Respondent reported that he was not employed or receiving earned income. On [REDACTED], 2016, [REDACTED], 2016, and [REDACTED], 2017, the Department notified Respondent that he was approved for benefits based on his receipt of no earned income.

The Department discovered from data on file with the Michigan Unemployment Insurance Agency that Respondent was employed and receiving earned income throughout 2017. Respondent received FAP benefits totaling \$1,280 from March 1, 2017, through July 31, 2017. Respondent received FIP benefits totaling \$1,477.50 from June 16, 2017, through July 31, 2017. If Respondent had reported his earned income from employment in a timely manner, he would have been eligible for only \$16 of the FAP benefits he received and would not have been eligible for any FIP benefits. Therefore, Respondent received a \$2,741.50 overissuance of FAP and FIP 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 is also suspected for a client who is alleged to have trafficked FAP benefits. 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 FIP and FAP benefits on applications for assistance dated [REDACTED] [REDACTED] 2017, and [REDACTED] [REDACTED] 2017, as well as a Redetermination (DHS-1010) form received by the Department on [REDACTED] [REDACTED] 2016. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent was given written notice that he was approved for FIP and FAP benefits based his benefit group's lack of earned income. Respondent's failure to report his earned income from employment despite his acknowledgement of the duty to do so, as well as the written notice that he was receiving benefits based on his receipt of no earned income, demonstrates that he knowingly failed to report required information and gave inaccurate information to obtain FIP and FAP benefits that he was not eligible for.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report his employment and receipt of earned income for the purposes of becoming eligible for and maintaining his eligibility for FIP and FAP benefits that he 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, p. 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.

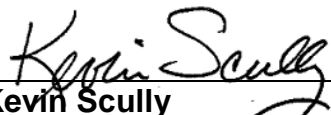
The Department has established an Intentional Program Violation (IPV).

### **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 of the Family Independence Program (FIP) and Food Assistance Program (FAP).
2. It is ORDERED that Respondent be disqualified from the Food Assistance Program (FAP) for a period of 12 months.
3. It is FURTHER ORDERED that Respondent be disqualified from Family Independence Program (FIP) for a period of 12 months.

KS/hb

  
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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

**Petitioner**

OIG  
PO Box 30062  
Lansing, MI 48909-7562

**DHHS**

Renee Olian  
322 Stockbridge  
Kalamazoo, MI 49001

Kalamazoo County, DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

**Respondent**

[REDACTED]  
[REDACTED], MI [REDACTED]