



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: July 24, 2019
MOAHR Docket No.: 19-002720
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. After due notice, a telephone hearing was held on July 2, 2019, from Lansing, Michigan. The Department was represented by Amber Johnson, Regulation Agent of the Office of Inspector General (OIG). Respondent represented himself.

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 [REDACTED] [REDACTED] 2017, Respondent acknowledged his duties and responsibilities including the duty to report all available assets. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 11-53.

2. 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, p 34.
3. Respondent reported on his [REDACTED] [REDACTED] 2017, application for assistance that no one in his household owned an interest in any real property. Exhibit A, pp 24-25.
4. Respondent reported on his [REDACTED] [REDACTED] 2017, application for assistance that he lived at [REDACTED], which is his current mailing address of record. Exhibit A, p 13.
5. Respondent failed to report to the Department that he owns an interest in a home located at [REDACTED], which has a fair market value of \$ [REDACTED]. Exhibit A, pp 62-69.
6. Respondent failed to report to the Department that he owns an interest in a home located at [REDACTED], which has a fair market value of \$ [REDACTED]. Exhibit A, pp 70-76.
7. Respondent received Food Assistance Program (FAP) benefits totaling \$1,105 from October 26, 2017, through December 31, 2017. Exhibit A, p 77.
8. On March 6, 2019, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$1,105 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-8.
9. The Department's OIG filed a hearing request on March 6, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
10. This was Respondent's first established IPV.
11. 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 (October 1, 2018), p 1.

Assets means cash, any other personal property and real property. Real property is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property. Personal property is any item subject to ownership that is not real property. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the availability tests and is not excluded. Available means that someone in the asset group has the legal right to use or dispose of the asset. Department of Human Services Bridges Eligibility Manual (BEM) 400 (January 1, 2018), pp 1-7.

The asset limit to remain eligible for FAP benefits is \$5,000 or less. BEM 400, p 5.

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 an ownership in available assets. Department Health and Human Services Bridges Administrative Manual (BAM) 105 (January 1, 2019), p 12.

On an application for assistance dated [REDACTED] [REDACTED] 2017, Respondent acknowledged the duty to report his ownership interest in any real property that is available for him to use or dispose of. 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 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. Respondent reported on his [REDACTED] [REDACTED] 2017, application for assistance that no one in his household held an interest in any real property.

Respondent's [REDACTED] [REDACTED] 2017, application form was neither true nor complete. Respondent failed to report that he owned an interest in homes located at [REDACTED] [REDACTED] and [REDACTED]. It was not disputed during the hearing that Respondent's homestead located at his current address of record at [REDACTED] [REDACTED] would have been an excluded asset even though it was not reported in the real property section of the application form. It was also not disputed that either of the homes Respondent failed to report had a fair market value exceeding \$5,000.

Respondent testified under oath that his is listed on properly records for the home located at [REDACTED] [REDACTED] for the purposes of assisting a family member get approval for a mortgage on this property with a fair market value of \$ [REDACTED]

Respondent denied any interest in the home located at [REDACTED] [REDACTED] Respondent testified that the name listed in property records matches his name, but that this is another person with the same name as him.

Respondent failed to report the [REDACTED] [REDACTED] property when he applied for FAP benefits as required by Department policy. Had he reported the property in 2017, he could have provided an explanation of his interest in that property then, and he could have provided verification of whether the property was jointly owned and the limitations of his interest in the property. Respondent failed to offer any evidence at his July 2, 2019, administrative hearing to establish joint ownership or lack of ownership in the [REDACTED] [REDACTED] property.

Respondent did not dispute that he is listed in property records for the [REDACTED] [REDACTED] property. The hearing record supports a finding that i Respondent had reported the [REDACTED] [REDACTED] property to the Department in 2017, he would not have been eligible for any FAP benefits due to excess assets. Respondent received FAP benefits totaling \$1,105 that he was not eligible for. Therefore, Respondent received a \$1,105 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] 2017. 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 his [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. Respondent falsely reported on his [REDACTED] 2017, application for assistance that no one in his household had any ownership interest in any real property.

Respondent's [REDACTED] 2017, application for assistance falsely indicated that he did not own any real property. By failing to report or verify the details of his interest in this property, Respondent became eligible for FAP benefits that he would not have been eligible for otherwise.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report or verify his interest in real property for the purposes of becoming eligible for 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.

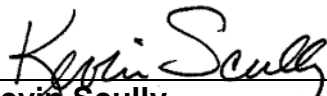
The Department has established an Intentional Program Violation (IPV).

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.
2. Respondent did receive an OI of Food Assistance Program (FAP) benefits in the amount of \$1,105.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$1,105 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/hb



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 Swiercz
51111 Woodward Ave 5th Floor
Pontiac, MI 48342

Oakland County (District 4), DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Respondent

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]