



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: August 21, 2019
MOAHR Docket No.: 19-004205
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 August 6, 2019, from Lansing, Michigan. The Department was represented by Allyson Carneal, 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 [REDACTED] 2016, Respondent acknowledged his duties and responsibilities including the duty to report if he was in violation of his parole or probation. Respondent did not have an apparent

physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 10-21.

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 reported on his [REDACTED] [REDACTED] 2016, application for assistance that he was not in violation of parole or probation. Exhibit A, p 14.
4. On an application for assistance dated [REDACTED] [REDACTED] 2017, Respondent acknowledged his duties and responsibilities including the duty to report if he was in violation of his parole or probation. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 23-35.
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 34-35.
6. Respondent reported on his [REDACTED] [REDACTED] 2017, application for assistance that he was not in violation of parole or probation. Exhibit A, p 27.
7. Respondent failed to report to the Department that on February 10, 2017, that he had absconded from probation. Exhibit A, p 22.
8. Respondent was arrested on November 15, 2017, and held in custody of the [REDACTED] Sheriff's Department until May 19, 2018. Exhibit A, p 36.
9. Respondent's probation was revoked on November 16, 2017. Exhibit A, p 22.
10. On April 12, 2019, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$1,990 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-8.
11. The Department's OIG filed a hearing request on April 12, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
12. This was Respondent's first established IPV.
13. 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 (October 1, 2017), 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.

A person who is violating a condition of probation or parole imposed under a federal or state law is disqualified. The person is disqualified as long as the violation occurs. Department of Health and Human Services Bridges Eligibility Manual (BEM) 203 (May 1, 2018), p 2.

A person is a resident of an institution when the institution provides the majority of his meals as part of its normal services. Residents of institutions are not eligible for FAP unless one of the following is true:

- The facility is authorized by the Food and Nutrition Service (FNS) to accept FAP benefits.
- The facility is an eligible group living facility.
- The facility is a medical hospital and there is a plan for the person's return home; see Temporary Absence in this item.

Department of Human Services Bridges Eligibility Manual (BEM) 212 (July 1, 2019), p 1.

On an application for assistance [REDACTED] 2016, Respondent acknowledged his duties and responsibilities including his duty to report whether he was in compliance with the terms of his probation or parole. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Respondent had been sentenced to a term of probation on February 10, 2017, when he absconded from that probation. Respondent did not report being an absconder to the Department. Respondent received FAP benefits totaling \$582 from March 1, 2017, through May 31, 2017. Respondent was not eligible for any of those benefits as a probation absconder. Therefore, Respondent received a \$582 overissuance of FAP benefits.

Respondent re-applied for FAP benefits on September 21, 2017, and acknowledged the duties and responsibilities of receiving FAP benefits. Respondent failed to report his status as a probation absconder, and would not have been eligible for any FAP benefits if he had reported this. Respondent continued to receive FAP benefits he was not entitled to receive as a probation absconder through November 15, 2017, when he was arrested and confined in the Calhoun County jail for being an absconder.

Respondent failed to report to the Department that he was in jail. Respondent's probation was then revoked and continued his sentence in jail. While housed in the Calhoun County jail, Respondent remained ineligible for FAP benefits while housed in an institution where meals are served as part of its normal operations. Respondent received FAP benefits totaling \$1,408 from September 1, 2017, through April 30, 2018.

Respondent was not eligible for any FAP benefits from September 1, 2017, through April 30, 2018, as an absconder, and as a resident of an institution where meals are

served. Therefore, Respondent received a \$1,408 overissuance of FAP benefits from September 1, 2017, through April 30, 2018.

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 the 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.*

On applications for assistance dated [REDACTED] 2016, and [REDACTED] 2017, Respondent acknowledged his duties and responsibilities including the duty to report being a probation violator, and his duty to report being in an institution where meals are normally served. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Respondent failed to report when he absconded from probation. While a probation absconder, Respondent re-applied for FAP benefits and once again failed to report that he remained a probation absconder. Later, Respondent was arrested and was not eligible for FAP benefits while in jail, which is an institution that services meals.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that the Respondent intentionally failed to report that he was in violation of his probation and confined in jail for the purposes of becoming eligible for an maintaining his eligibility 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 the disqualified person 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 (January 1, 2018), 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).

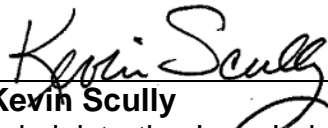
DECISION AND ORDER

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 \$1,990.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$1,990 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

DHHS

Carisa Drake
190 East Michigan
Battle Creek, MI 49016

Calhoun County, DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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