



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: July 24, 2019
MOAHR Docket No.: 19-004526
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 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 August 18, 2016, Respondent's Family Independence Program (FIP) benefits closed based on the income of the father of her children. Exhibit A, p 55.

2. On an application for assistance dated [REDACTED] [REDACTED] 2016, Respondent acknowledged her duties and responsibilities including the duty to report persons in the home and 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 14-53.
3. Respondent acknowledged under penalties of perjury that her [REDACTED] [REDACTED] 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 35.
4. Respondent reported on her [REDACTED] [REDACTED] 2016, application for assistance that she was living with her two children and that the children's father was not in the home while working outside Michigan. Exhibit A, pp 18-22.
5. Respondent provided an e-mail statement as verification that her children's father was no longer living in the home on [REDACTED] [REDACTED] 2016. Exhibit A, p 58.
6. The father of Respondent's children received earned income from employment from February 5, 2016, through February 26, 2017. Exhibit A, pp 71-73.
7. The father of Respondent's children was employed and worked in Michigan from August 1, 2016, through January 31, 2017, and he reported to his employer that he was living with Respondent. Exhibit A, pp 74-78.
8. Respondent received Family Independence Program (FIP) benefits totaling \$2,371 from [REDACTED] [REDACTED] 2016, through [REDACTED] [REDACTED] 2017. Exhibit A, p 79.
9. Respondent received Food Assistance Program (FAP) benefits totaling \$2,635 from [REDACTED] [REDACTED] 2016, through [REDACTED] [REDACTED] 2017. Exhibit A, p 80.
10. On April 24, 2019, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$5,006 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 7-10.
11. The Department's OIG filed a hearing request on April 24, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
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 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 persons in the home and all household income of persons in the home. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (January 1, 2019), p 12.

On an application for assistance dated [REDACTED] [REDACTED] 2016, Respondent acknowledged the duty to report persons in the home and the income of all person in the home. 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 her [REDACTED] [REDACTED] 2016, application form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Respondent reported on her [REDACTED] [REDACTED] 2016, application for assistance that she was living with two children and that their father was out of the home due to his employment.

Respondent's FIP benefits had just closed based on the earned income of the father of her children on August 18, 2016. After cash assistance closed, Respondent re-applied for assistance claiming that the father was out of the home.

The evidence supports a finding that the father of Respondent's children was living in Respondent's home, and that he was receiving earned income from employment that was not applied towards Respondent's eligibility for FIP or FAP benefits. Respondent became eligible for benefits based on her report that the father of her children was out of the home for employment, but the father's employer reported to the Department that he was not required to travel and was not assigned out of the area.

Respondent received FIP benefits totaling \$2,371 from [REDACTED] [REDACTED] 2016, through [REDACTED] 31, 2017, and FAP benefits totaling \$2,635 from [REDACTED] [REDACTED] 2016, through [REDACTED] 31, 2017. If Respondent had reported all household income to the Department, she would not have been eligible for any of those benefits. Therefore, Respondent received a \$5,006 overissuance of FIP and 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 rights and responsibilities of receiving FIP and FAP benefits on an application for assistance dated [REDACTED] 2016. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Respondent lost her cash assistance based on the earned income received by the father of her children. Immediately after those benefits closed, Respondent re-applied and falsely claimed that the father of her children would be out of the home for employment. The evidence supports a finding that the father of Respondent's children was not out of town for employment and that he was actually in the home. As a result of Respondent's failure to truthfully and completely reported her circumstances, she received an overissuance of FIP and FAP benefits.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report the father of her children living in her home and the earned income he was receiving for the purposes of becoming eligible for FIP and FAP benefits that she 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 Family Independence Program (FIP) benefits in the amount of \$2,371.
3. Respondent did receive an OI of Food Assistance Program (FAP) benefits in the amount of \$2,635.
4. The Department is ORDERED to initiate recoupment procedures for the amount of \$5,006 in accordance with Department policy.
5. It is FURTHER ORDERED that Respondent be disqualified from the Family Independence Program (FIP) and 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], MI [REDACTED]