



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 8, 2019  
MOAHR Docket No.: 19-005318  
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 9, 2019, from Lansing, Michigan. The Department was represented by Craig Curtis, 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] 2015, 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 12-22.

2. Respondent acknowledged under penalties of perjury that her [REDACTED], 2015, 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 21.
3. Respondent reported on her [REDACTED], 2015, application for assistance that she was living with her child and that she was employed. Exhibit A, pp 12-22.
4. On a Redetermination (DHS-1010) form received by the Department on [REDACTED], 2015, 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 23-28.
5. Respondent acknowledged under penalties of perjury that her [REDACTED], 2015, Redetermination 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 28.
6. Respondent reported that she was living with her child and that she was employed. Exhibit A, pp 23-28.
7. On a Redetermination (DHS-1010) form received by the Department on [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 29-36.
8. Respondent acknowledged under penalties of perjury that her [REDACTED], 2016, Redetermination 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.
9. Respondent reported that she was living with her child and that she was employed. Exhibit A, pp 29-36.
10. On a Redetermination (DHS-1010) form received by the Department on [REDACTED], 2017, 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 37-44.
11. Respondent acknowledged under penalties of perjury that her [REDACTED], 2017, Redetermination 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 43.
12. Respondent reported that she was living with her child and the father of her child, and that her employment had ended. Exhibit A, pp 37-44.

13. Department records indicate that Respondent reported on July 29, 2017, that her child's father had moved back into the home some time in February of 2017. Exhibit A, p 46.
14. Respondent received Food Assistance Program (FAP) benefits totaling \$7,382 from February 1, 2015, through July 31, 2017. Exhibit A, pp 49-64.
15. The father of Respondent's child received Food Assistance Program (FAP) benefits totaling \$5,156 from February 1, 2015, through July 31, 2017. Exhibit A, pp 49-64.
16. Respondent told a Department investigator on a signed statement dated April 30, 2019, that her child's father frequently left her household and that her caseworker left him off the case because she was tired of doing the paperwork associated with frequent changes to the benefit group size and composition. Exhibit A, p 48.
17. On May 31, 2019, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$515 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-9.
18. The Department's OIG filed a hearing request on May 31, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
19. This was Respondent's first established IPV.
20. 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.

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. 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 pended 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.

The Department received Respondent's FAP application on [REDACTED] 2015, where she reported that she was living with her child. The application does not indicate where the father of her child was living. Respondent received FAP benefits from [REDACTED], 2015, through [REDACTED], 2017. During that time, the Department received Redetermination (DHS-1010) forms on [REDACTED], 2015, and [REDACTED], 2016, where Respondent continued to report that she was living with her daughter only.

On a Redetermination form received by the Department on [REDACTED], 2017, Respondent reported that the father of her child was a part of her household.

Respondent told a Department investigator that her child's father would leave the home for weeks at a time and that this happened so frequently that her caseworker refused to make the changes to her FAP benefits case.

FAP group composition is established by determining who lives together, the relationship of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the persons resides in an eligible living situation. Parents must be included in the same benefit group as their children. Persons temporarily absent from the group are considered living with the group. Department of Human Services Bridges Eligibility Manual (BEM) 212 (January 1, 2017), p 1.

Living with means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. BEM 212, p 3.

A person's absence is temporary if all of the following are true:

- The person's location is known.
- The person lived with the group before an absence.
- There is a definite plan for return.
- The absence has lasted or is expected to last 30 days or less.

BEM 212, p 3.

On a Redetermination form received by the Department on [REDACTED] 17, and during an interview on [REDACTED], 2017, Respondent reported to the Department that her child's father had moved back into her home some time in February of 2017, which was an untimely report of a change. Respondent signed a statement on April 30, 2019, where she disclosed that her child's father had been in and out of her household frequently.

The hearing record supports a finding that the father of Respondent's child, who is a mandatory member of her FAP benefits group while he is living in the household, was "living with" the group during the time she was receiving FAP benefits as a group of two. Respondent's explanation of why she did not have him included in the FAP benefit group was that he would be out of the home for weeks at a time.

However, being out of the home for 30 days or less did not mean that he was not “living with” Respondent and her child, but only that he was “temporarily absent” as defined by BEM 212. Respondent told a Department investigator that her caseworker was tired of adding and removing the father of her child from her FAP case, but no evidence was presented on the record that she reported these changes to her circumstances. Further, even if she was reporting these absences from her home to the Department, the hearing record does not support a finding that the child’s father was not temporarily absent from the home.

From February 1, 2015, through July 31, 2017, Respondent received FAP benefits as a group of two totaling \$7,382. During that same period, the father of Respondent’s child was a FAP recipient as a separate FAP benefit group and he received FAP benefits totaling \$5,156. These two groups should have been combined into one group of mandatory group members as directed by BEM 212. The two groups actually received a combined total of FAP benefits in the amount off \$12,538. As a group of three, they would have been eligible for FAP benefits totaling \$12,023.

Repayment of an overissuance is the responsibility of anyone who was an eligible, disqualified, or other adult in the program group at the time the overissuance occurred. The Department will collect from all adults who were a member of the case and recoupment may be deducted on more than one case for a single overissuance. Department of Health and Human Services Bridges Eligibility Manual (BEM) 725 (October 1, 2017), p 1.

Therefore, Respondent is responsible for a \$515 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] 2015. 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] 2015, 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] 2015, application form that she was living with her child, and failed to report where the father of that child was living. Respondent would go on to report that she was “living with” only her child and that the father was not in the household on Redetermination forms received by the Department on [REDACTED] 2015, and [REDACTED] 2016. Respondent would later claim the father of her child was in and out of the home, but the hearing record does not contain evidence that Respondent reported these circumstances to the Department in a timely manner.

The evidence supports a finding that Respondent was aware that her failure to report the father of her child on her application and redetermination forms would mean that he would not be included in the group. Further, since the father of her child was receiving FAP benefits on another case, the evidence supports a finding that she knew that he would receive more FAP benefits as a separate group than if he were added to her FAP group.

Respondent signed a statement where she claimed that her caseworker declined to add the father of her child to her FAP benefit group. No evidence was presented on the record that Respondent reported her circumstances to her worker. Further, if she had reported these circumstances to her worker, the father of her child would have been included in Respondent’s FAP benefit group because he was only temporarily absent from the household during while he was out of the home for what Respondent described as “weeks at a time.”

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report that the father of her child was not “living with” her and her child for the purposes of maintaining her eligibility for 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 Food Assistance Program (FAP) benefits in the amount of \$515.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$515 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**

Jackie Stempel  
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Muskegon County, DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

**Petitioner**

OIG  
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**Respondent**

[REDACTED], MI [REDACTED]