



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: October 18, 2019
MOAHR Docket No.: 19-005470
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, telephone hearing was held on September 24, 2019, from Lansing, Michigan. The Department was represented by Chad Essebaggers, 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] [REDACTED] [REDACTED] Respondent acknowledged her duties and responsibilities including the duty to report a change in household composition, such as the addition or loss of a household member. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 10-45.

2. Respondent acknowledged under penalties of perjury that her [REDACTED] [REDACTED] 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 27.
3. Respondent reported on her [REDACTED] [REDACTED] application form that a child ([REDACTED]) was temporarily living with a friend or relative, and that the child lived 7 days with Respondent. Exhibit A, p 14.
4. On a Redetermination form received by the Department on [REDACTED], Respondent reported to the Department that one household member had moved out, that she pays for health insurance for herself and the three children, but the child ([REDACTED]) was also listed as an applicant in the household. Exhibit A, pp 46-51.
5. Respondent acknowledged under penalties of perjury that her [REDACTED], 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 51.
6. On an application for assistance dated [REDACTED] [REDACTED] 2017, Respondent acknowledged her duties and responsibilities including the duty to report a change in household composition, such as the addition or loss of a household member. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 52-97.
7. Respondent acknowledged under penalties of perjury that her [REDACTED] 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 27.
8. Respondent reported on her [REDACTED], application form, that the child ([REDACTED]) was living in her home, and that the child lived 7 days with Respondent. Exhibit A, p 58.
9. On an application for assistance dated [REDACTED], Respondent acknowledged her duties and responsibilities including the duty to report a change in household composition, such as the addition or loss of a household member. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 98-130.
10. Respondent acknowledged under penalties of perjury that her [REDACTED], 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, pp 111-112.
11. Respondent reported on her [REDACTED], application for assistance that the child ([REDACTED]) was living at the same address as her. Exhibit A, p 103.
12. The child ([REDACTED]) was enrolled in and attended a school in North Carolina from August 24, 2016, through June 16, 2017, and from August 23, 2017, through

June 15, 2018. The child (████) was absent 5 days from the 2016-2017 school year, and absent 3 days from the 2017-2018 school year. Exhibit A, pp 132-135.

13. On February 9, 2009, the Portsmouth Juvenile & Domestic Relations District Court ordered that legal care and custody was awarded to the paternal great-grandmother of the child (████) Exhibit A, p 133.
14. Respondent received Food Assistance Program (FAP) benefits as a group of three totaling \$5,320 from September 1, 2016, through August 31, 2017. Exhibit A, pp 147-164.
15. On May 16, 2019, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$1,304 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-8.
16. The Department's OIG filed a hearing request on May 16, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
17. A notice of hearing was mailed to Respondent at the last known address and was 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.

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).

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 a change in household composition, such as the addition or loss of a household member. 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.

Certified change reporting households are required to report all changes in household composition, such as the addition or loss of a household member. 7 CFR 273.12(a).

On an application for assistance dated [REDACTED], Respondent acknowledged the duty to report a change to persons in the home or a change in household composition, such as the addition or loss of a household member. 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], 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 that the child ([REDACTED]) was temporarily living with a friend or relative.

On a Redetermination form received by the Department on [REDACTED], Respondent reported to the Department that one household member had moved out, that she pays for health insurance for herself and the three children, but the child ([REDACTED]) was also listed as an applicant in the household.

In September of 2016, Respondent received a \$323 monthly allotment of FAP benefits, and this amount appears to be prorated based on the [REDACTED], application date. In October of 2016, Respondent received a \$499 monthly allotment of FAP benefits. The Department alleges that Respondent was eligible for a \$357 monthly allotment of FAP benefits, causing an overissuance of \$142.

A group of two receiving a \$357 monthly allotment of FAP benefits corresponds to a net monthly income of \$0, but a group of three received a net income of \$0 is eligible for a \$511 monthly allotment of FAP benefits. Department of Health and Human Services Reference Table Manual (RFT) 260 (October 1, 2016), p 1. No budget explaining the determination of the overissuance amount was offered as evidence for any month from September 1, 2016, through January 1, 2017.

Therefore, this Administrative Law Judge finds that the Department has failed to offer sufficient evidence to establish the amount of the overissuance of FAP benefits.

Respondent entered the child ([REDACTED]) on applications for assistance dated [REDACTED] [REDACTED] [REDACTED] and [REDACTED]. Respondent reported that the child ([REDACTED]) lives at the same address as her for 7 days, and that the other children live with her for 4 days. While the evidence supports a finding that the child ([REDACTED]) was not living in Respondent's home for any days while attending school in another state, the Department failed to establish by clear and convincing evidence that Respondent intentionally reported false information for the purposes of becoming eligible for FAP benefits that she was not eligible for.

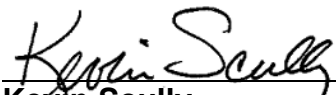
Therefore, this Administrative Law Judge finds that the Department has failed to establish an Intentional Program Violation by clear and convincing evidence.

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 not established by clear and convincing evidence that Respondent committed an IPV.
2. The Department is ORDERED to delete the OI and cease any recoupment action.

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

Chelsea McCune
27690 Van Dyke
Warren, MI 48093

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Macomb County (District 20), DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Respondent

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