



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], AZ [REDACTED]

Date Mailed: September 23, 2019
MOAHR Docket No.: 19-005529
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 September 10, 2019, from Lansing, Michigan. The Department was represented by Thomas Lilienthal, 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], 2007, Respondent acknowledged his duties and responsibilities including the duty to report changes of residency and the receipt of benefits from another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 15-22.

2. Respondent acknowledged under penalties of perjury that his J [REDACTED], 2007, 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 21.
3. Respondent reported on his [REDACTED] [REDACTED] 2007, application for assistance that he was not employed. Exhibit A, p 17.
4. Respondent failed to report to the Department that his former employment had resumed on July 5, 2007, or that he received earned income from July 13, 2007, through December 31, 2017. Exhibit A, pp 25-28.
5. Respondent received Food Assistance Program (FAP) benefits totaling \$1,686 from September 1, 2007, through December 31, 2007. Exhibit A, p 29.
6. On an application for assistance dated [REDACTED] [REDACTED] 2008, Respondent acknowledged his duties and responsibilities including the duty to report changes of residency and the receipt of benefits from another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 39-46.
7. Respondent acknowledged under penalties of perjury that his [REDACTED] [REDACTED] 2008, 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 45.
8. Respondent reported on his [REDACTED] [REDACTED] 2008, application for assistance that he was employed. Exhibit A, p 41.
9. On an application for assistance dated [REDACTED] [REDACTED] 2009, Respondent acknowledged his duties and responsibilities including the duty to report changes of residency and the receipt of benefits from another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 47-62.
10. Respondent acknowledged under penalties of perjury that his [REDACTED] [REDACTED] 2009, 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 61.
11. Respondent reported on his [REDACTED] [REDACTED] 2009, application for assistance that he was living in Michigan. Exhibit A, p 48.
12. Respondent received Food Assistance Program (FAP) benefits totaling \$1,600 from September 1, 2009, through April 30, 2010. Exhibit A, p 70.
13. Respondent received food assistance benefits from the state of Arizona from [REDACTED] of 2009, through [REDACTED] of 2010. Exhibit A, pp 68-69.

14. The Department's OIG filed a hearing request on May 20, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
15. On May 20, 2019, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$3,096 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 7-11.
16. This was Respondent's first established IPV.
17. 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.

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 changes of employment status and increases of earned income. A change of residency and the receipt of benefits from another state must also be reported. Department of Human Services Bridges Assistance Manual (BAM) 105 (October 1, 2016), pp 1-20.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (January 1, 2018), 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.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. Benefit duplication is prohibited except for MA and FAP in limited circumstances. Department of Health and Human Services Bridges Eligibility Manual (BEM) 222 (October 1, 2018), p 3.

An individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple SNAP benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years. 7 CFR 273(b)(5).

On an application for assistance dated [REDACTED] [REDACTED] 2007, Respondent acknowledged the duties and responsibilities of receiving FAP benefits including the duty to report changes of employment status and increases of earned income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent reported on his [REDACTED] [REDACTED] 2007, application form that he was not employed.

Respondent failed to report to the Department when his former employment resumed on [REDACTED] [REDACTED] 2007, and that he had received earned income from employment from July 13, 2007, through November 30, 2007. The evidence supports a finding that during that period, Respondent received an hourly wage as well as tips.

If Respondent had reported his first paycheck in a timely manner, the Department would have redetermined his eligibility for ongoing FAP benefits by the first benefit period after August 14, 2007. Respondent received FAP benefits totaling \$1,686 from September 1, 2007, through December 31, 2007. If Respondent had reported his income to the Department, then he would have been eligible for only \$190 of those FAP benefits. Therefore, Respondent received a \$1,496 overissuance of FAP benefits.

Respondent again acknowledged the duties and responsibilities of receiving FAP benefits, including the duty to report changes of residency and the receipt of food assistance from another state, on an application for assistance dated [REDACTED] [REDACTED] 2009. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent reported on his [REDACTED] [REDACTED] 2009, application form that he was living in Michigan.

Respondent was a recipient of food assistance benefits from the state of Arizona from [REDACTED] of 2009, through [REDACTED] of 2010. Respondent received Michigan FAP benefits totaling \$1,600 from September 1, 2009, through April 30, 2010. If Respondent had reported that he was an Arizona food assistance recipient, then he would not have been eligible for any Michigan FAP benefits. Therefore, Respondent received a \$1,600 overissuance of Michigan 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 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.*

Respondent acknowledged the duties and responsibilities of receiving FAP benefits on applications for assistance dated [REDACTED] [REDACTED] 2007, [REDACTED] [REDACTED] 2008, and [REDACTED] [REDACTED] 2009. 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 the earned income from employment that he received from July 13, 2007, through December 31, 2007. This resulted in an overissuance of FAP benefits.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report his earned income from employment for the purposes of maintaining his eligibility for FAP benefits that he would not have been eligible for otherwise.

Respondent failed to report that he was receiving food assistance from the state of Arizona concurrently with his Michigan FAP benefits from September 1, 2009, through April 30, 2010.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report that he applied for and received Arizona food assistance concurrently with his Michigan FAP benefits for the purposes of maintaining his eligibility for Michigan 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.

A twelve-month disqualification from the Food Assistance Program (FAP) is appropriate in this case because although Respondent did receive concurrent food assistance, he did not make a fraudulent statement or representation with respect to identify or place of residence. 7 CFR 273(b)(5). The evidence supports a finding that Respondent truthfully reported that he was living in Michigan on July 21, 2009. Respondent intentionally failed to report information needed to make a correct benefit determination when he failed to report his receipt of concurrent food assistance resulting in an overissuance of Michigan FAP benefits.

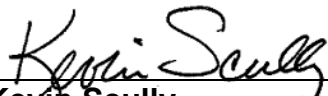
The Department has established an Intentional Program Violation (IPV).

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, 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 \$3,096.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$3,096 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

Lacey Whitford
1919 Parkland Drive
Mt. Pleasant, MI 48858

Isabella County, DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED]
[REDACTED], AZ [REDACTED]