



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], AL [REDACTED]

Date Mailed: December 19, 2019
MOAHR Docket No.: 19-010275
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 November 19, 2019, from Lansing, Michigan. The Department was represented by Jonetta Green, 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) and Medical Assistance (MA) 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 a Redetermination (DHS-1010) form received by the Department on [REDACTED], 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 14-21.

2. Respondent acknowledged under penalties of perjury that his [REDACTED], Redetermination 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], Redetermination form for assistance that he was living in Michigan and not receiving food assistance in another state. Exhibit A, pp 14-21.
4. Respondent used his Michigan Food Assistance Program (FAP) benefits exclusively in Michigan from June 12, 2017, through November 15, 2017. Exhibit A, pp 50-51.
5. On June 15, 2017, Respondent filed an application for food assistance with the state of Alabama reporting that he was living in Alabama and that he did not receive or expect to receive food assistance from any other state that month or the previous month. Exhibit A, pp 37-39.
6. On August 25, 2017, Respondent filed an application for food assistance with the state of Alabama reporting that he was living in Alabama and that he did not receive or expect to receive food assistance from any other state that month or the previous month. Exhibit A, pp 40-42.
7. On another Redetermination (DHS-1010) form received by the Department on [REDACTED], 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 22-28.
8. Respondent acknowledged under penalties of perjury that his [REDACTED] [REDACTED] Redetermination 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 27.
9. Respondent reported on his [REDACTED], Redetermination form for assistance that he was living in Michigan and not receiving food assistance in another state. Exhibit A, p 27.
10. Respondent used his Michigan Food Assistance Program (FAP) benefits exclusively in Alabama from March 30, 2018, through August 14, 2019. Exhibit A, pp 51-62.
11. Respondent used Alabama food assistance benefits to make purchases from February 20, 2018, through June 24, 2018. Exhibit A, pp 48-49.
12. On another Redetermination (DHS-1010) form received by the Department on [REDACTED], 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 29-36.

13. Respondent acknowledged under penalties of perjury that his [REDACTED], Redetermination 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 35.
14. Respondent reported on his [REDACTED] Redetermination form for assistance that he was living in Michigan and not receiving food assistance in another state. Exhibit A, pp 29-36.
15. On May 31, 2019, Respondent filed a Food Assistance Program Six-Month Report Form with the state of Alabama reporting that had not moved from the Alabama residence. Exhibit A, pp 43-46.
16. Department records indicate that Respondent reported that he was traveling back and forth between Michigan and Alabama. Exhibit A, p 71.
17. Respondent received Food Assistance Program (FAP) benefits totaling \$1,152 from April 1, 2018, through September 30, 2018. Exhibit A, pp 64-66.
18. Respondent received Food Assistance Program (FAP) benefits totaling \$1,344 from January 1, 2019, through July 31, 2019. Exhibit A, pp 64-66.
19. Respondent received Medical Assistance (MA) benefits with a value of \$6,613.55 from April 1, 2018, through July 31, 2019. Exhibit A, pp 67-70.
20. Respondent received food assistance benefits from the state of Alabama from June 1, 2018, through June 15, 2019. Exhibit A, p 47.
21. The Department's OIG filed a hearing request on September 30, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
22. On September 30, 2019, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$9,109.55 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 7-11.
23. 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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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.

considered a resident under the FAP while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (April 1, 2018), pp 1-2. The Department is prohibited from imposing any durational residency requirements on the eligibility for FAP benefits. 7 CFR 273.3(a).

To be eligible for MA benefits, a person must be a Michigan resident. A Michigan resident is an individual who is living in Michigan except for a temporary absence. Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (April 1, 2018), pp 1-2. A resident of Michigan is a person who is living in this state voluntarily with the intention of making his or her home in this state and not for a temporary purpose and who is not receiving assistance from another state. MCL 400.31.

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 a Redetermination (DHS-1010) form received by the Department on [REDACTED] [REDACTED] Respondent acknowledged the duties and responsibilities of receiving FAP benefits including the duty to report a change 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. Respondent reported that he was living in Michigan, which is consistent with his use of Michigan FAP benefits exclusively in Michigan until November 15, 2017.

Respondent applied for food assistance from the state of Alabama on June 15, 2017, and August 25, 2017, but the evidence does not support a finding that these applications were approved.

Respondent used his Michigan FAP benefits exclusively in Alabama from March 30, 2018, through August 14, 2019. The evidence supports a finding that Respondent received Alabama food assistance from February of 2018, through June of 2019.

The evidence supports a finding that Respondent was an active Michigan FAP recipient while concurrently receiving Alabama food assistance benefits. Respondent was not eligible to receive any Michigan FAP benefits while receiving Alabama food assistance. The evidence supports a finding that Respondent received a \$2,496 overissuance of

Michigan FAP benefits because he was an active recipient of concurrent food assistance from the state of Alabama.

Respondent was a recipient of Michigan MA benefits with a value of \$6,613.55 during the period of April 1, 2018, through July 31, 2019. During that period, Respondent was not in Michigan, and was an active recipient of Alabama food assistance. Respondent was not eligible for Michigan MA benefits after applying for Alabama food assistance as an Alabama resident. Therefore, Respondent received a \$6,613.55 overissuance of Michigan MA 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 Redetermination (DHS-1010) forms dated October 19, 2016, and September 15, 2017.

Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

On [REDACTED], the Department received another Redetermination (DHS-1010) form where he acknowledged the duties and responsibilities of receiving both Michigan FAP and Michigan MA benefits, including the duty to report a change of residency and the receipt of duplicate assistance from another state. 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 his [REDACTED], redetermination form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Respondent reported on his [REDACTED] Redetermination form that he was living in Michigan and that he was not receiving food assistance in another state.

The evidence supports a finding that Respondent made false statements on his [REDACTED], Redetermination form with respect to residency and his receipt of concurrent food assistance from the state of Alabama. When Respondent filed his signed Redetermination form, he had not been in Michigan for more than six months and had been concurrently receiving Alabama food assistance. Respondent failed to report a continued absence from Michigan and no evidence was presented on the record that his absence was temporary or that he intended to return to Michigan. Respondent's receipt of concurrent food assistance from the state he was living in and using his Michigan FAP benefits supports a finding of an intent to remain living in Alabama.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally reported that he was not receiving food assistance in another state for the purposes of maintaining his eligibility for Michigan FAP benefits that he was not 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 Department has established an Intentional Program Violation (IPV).

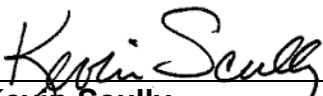
A ten-year disqualification is appropriate in this case due to the concurrent receipt of FAP benefits in Michigan and food assistance in the state of Alabama, and because Respondent made fraudulent statements with respect to his place of residence resulting in an overissuance of FAP benefits.

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 \$2,496.
3. Respondent did receive an OI of Medical Assistance (MA) benefits in the amount of \$6,613.55.
4. The Department is ORDERED to initiate recoupment procedures for the amount of \$9,109.55 in accordance with Department policy.
5. It is FURTHER ORDERED that Respondent be personally disqualified from participation in the Food Assistance Program (FAP) for 10 years.

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

Richard Latimore
4733 Conner
Detroit, MI 48215

Wayne County (District 57), DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Respondent

[REDACTED], AL [REDACTED]