



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: February 19, 2020
MOAHR Docket No.: 19-010281
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 February 4, 2020, from Lansing, Michigan. The Department was represented by Christina Herrod, Regulation Agent of the Office of Inspector General (OIG). Respondent represented himself.

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], Respondent acknowledged his duties and responsibilities including the duty to report persons in his household 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 13-43.

2. Respondent acknowledged under penalties of perjury that his [REDACTED], [REDACTED] 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, pp 25-26.
3. Respondent reported on his [REDACTED], application for assistance that his son was living in his household. Exhibit A, pp 16-17.
4. On [REDACTED] the Department notified Respondent that he was eligible for Food Assistance Program (FAP) benefits as a household of two. Exhibit A, pp 52-57.
5. On December 3, 2016, the Department notified Respondent that he was eligible for Food Assistance Program (FAP) benefits as a household of two. Exhibit A, pp 58-61.
6. On May 18, 2017, the Department notified Respondent that he was eligible for Food Assistance Program (FAP) benefits as a household of two. Exhibit A, pp 62-65.
7. Respondent acknowledged under penalties of perjury that a Redetermination (DHS-1010) form received by the Department on [REDACTED], was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Exhibit A, pp 44-51.
8. On a Redetermination (DHS-1010) form received by the Department on [REDACTED], Respondent reported that his son was living in his household. Exhibit A, pp 44-51.
9. On September 27, 2017, the Department notified Respondent that he was eligible for Food Assistance Program (FAP) benefits as a household of two. Exhibit A, pp 72-75.
10. On December 9, 2017, the Department notified Respondent that he was eligible for Food Assistance Program (FAP) benefits as a household of two. Exhibit A, pp 76-79.
11. On May 31, 2018, the Department notified Respondent that he was eligible for Food Assistance Program (FAP) benefits as a household of two. Exhibit A, pp 80-83.
12. On March 9, 2017, Respondent's son was receiving Supplemental Security Income (SSI) benefits as an Alabama resident. Exhibit A, pp 88-89.
13. Respondent received Food Assistance Program (FAP) benefits totaling \$999 from March 1, 2017, through May 31, 2018. Exhibit A, pp 90-92.

14. Respondent used his Food Assistance Program (FAP) benefits to make purchases exclusively in Michigan from February 13, 2017, through May 25, 2018. Exhibit A, pp 92-100.
15. Respondent's son was part of a household receiving food assistance benefits from the state of Alabama from January of 2017 through May of 2018. Exhibit A, pp 84-87.
16. The Department's OIG filed a hearing request on September 26, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
17. On September 26, 2019 the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$767 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 7-10.
18. This was Respondent's first established IPV.
19. 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. 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 (April 1, 2019), 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.

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. Department of Human Services Bridges Eligibility Manual (BEM) 212 (July 1, 2019), p 1.

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 September 13, 2016, Respondent acknowledged the duties and responsibilities of receiving FAP benefits, including the duty to report persons in the home, and the receipt of food 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 reported that his household of two people consisted of himself and his son.

Respondent was an ongoing FAP recipient as a household of two from September 16, 2016, through May 31, 2018, as a group of two people. The Department notified Respondent that he was eligible for FAP benefits as household of two on September 16, 2016, December 3, 2016, May 18, 2017, September 27, 2017, December 9, 2017, and May 31, 2018.

Respondent acknowledged under penalties of perjury that his [REDACTED] Redetermination (DHS-1010) form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Respondent reported that his son was living with him on his [REDACTED], Redetermination form.

Respondent failed to report when his son moved out of Michigan to live with his Mother in Alabama. Respondent's son was an SSI recipient in March of 2017 and had reported to the Social Security Administration that he was living in Alabama with his mother. Respondent's son was part of a household receiving Alabama food assistance from January of 2017, through May 31, 2018. No evidence was presented on the record that the child was in Alabama temporarily or that he was expected to return to Michigan.

Respondent was not eligible for FAP benefits as a group of two while his son was not living in his household. The evidence supports a finding that Respondent was living in Michigan from February 13, 2017, through May 25, 2018, because he was using his Michigan FAP benefits exclusively in Michigan. During the time Respondent was living in Michigan, his son was living in Alabama receiving food assistance as part of his mother's household.

Respondent was not eligible to receive Michigan FAP benefits as a group of two, and was not eligible to receive Michigan FAP benefits for his son while the son was concurrently receiving food assistance as part of a household in Alabama.

Respondent received FAP benefits totaling \$999 from March 1, 2017, through May 31, 2018. Respondent was not eligible for FAP benefits as a group of two, but would have been eligible for FAP benefits totaling \$232 as a group of one. Therefore, Respondent received a \$767 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 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 an application for assistance dated [REDACTED]. 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 when his son left the household, but continued to receive FAP benefits as if his son had remained in his household. Respondent also failed to report that his son had become an Alabama resident and was receiving food assistance from Alabama as part of another household.

On [REDACTED] Respondent falsely reported to the Department that his son was living in Michigan. As a result of Respondent fraudulently reporting that his son was living in Michigan, he received 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 that his son was not longer living in his home, and was no longer a Michigan resident, and was concurrently receiving food assistance in an Alabama household 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.

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

On [REDACTED], Respondent intentionally made a fraudulent statement with respect to the place of residence where his son resided, which resulted in an overissuance of FAP benefits. A ten-year disqualification is appropriate in this case due to the concurrent receipt of food assistance in Michigan and Alabama. 7 CFR 273(b)(5).


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 \$767.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$767 in accordance with Department policy.

4. It is FURTHER ORDERED that Respondent be personally disqualified from participation in the Food Assistance Program 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

DHHS

Wayne County (District 76) via electronic mail

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG via electronic mail

Respondent

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