



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], FL [REDACTED]

Date Mailed: October 23, 2020
MOAHR Docket No.: 19-011054
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [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 October 8, 2020. The Department was represented by Mark Mandreky, Regulation Agent of the Office of Inspector General (OIG).

This hearing has been adjourned several times in an effort to locate Respondent and provide her with a hearing notice. As of October 8, 2020, the Notice of Disqualification Hearing mailed on September 3, 2020, had not been returned by the US Postal Service as undeliverable after being mailed to her last known address. Further, the hearing involves the Food Assistance Program (FAP) only.

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 May 12, 2005, Respondent acknowledged the duties and responsibilities of receiving Food Assistance Program (FAP) benefits. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, 11-19.
2. Respondent acknowledged under penalties of perjury that her May 12, 2005, 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 17.
3. On August 31, 2005, Respondent was issued a state of Florida driver's license. Exhibit A, pp 27-28.
4. Respondent starting using Michigan Food Assistance Program (FAP) benefits in Florida on October 1, 2005 and used them exclusively in Florida through March 12, 2006. Exhibit A, pp 20-21.
5. On June 29, 2019, the motion for nolle prosequi was granted and charges of welfare fraud against Respondent were dismissed without prejudice. Exhibit A, p 26.
6. On October 8, 2020, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$2,258.18 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-8.
7. The Department's OIG filed a hearing request on October 8, 2020, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, 2.

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) is funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 through 7 USC 2036a. It is implemented by the federal regulations contained in 7 CFR 273. The Department administers FAP pursuant to

MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq*, and Mich Admin Code, R 400.3001 through 400.3011.

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.

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.

To be eligible for FAP benefits, a person must be a Michigan resident. A person is 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 (July 1, 2020), pp 1-2. The Department is prohibited from imposing any durational residency requirements on the eligibility for FAP benefits and an intent to remain in the state is not required. 7 CFR 273.3(a).

State agencies must adopt uniform standards to facilitate interoperability and portability nationwide. The term "interoperability" means the EBT system must enable benefits issued in the form of an EBT card to be redeemed in any state. 7 CFR 274.8(b)(10).

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 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; 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.*

On an application for assistance dated May 12, 2005, Respondent acknowledged the duties and responsibilities of receiving FAP benefits. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. On August 31, 2005, Respondent was issued a state of Florida driver's license. Respondent began using FAP benefits in Florida on October 1, 2005 and used them exclusively in Florida through March 12, 2006.

The hearing record supports a finding that Respondent travelled to Florida and remained there for an extended period of time based on the purchases she made using FAP benefits in Florida. While in Florida, Respondent applied for and was issued a state of Florida driver's license. The Department's representative argued that remaining in Florida for an extended period of time along with applying for a Florida driver's license is evidence of Respondent's intent to live in Florida and not return to Michigan.

Although Respondent failed to appear at the hearing and testify on her own behalf, the Department's investigation summary indicates that Respondent had been interviewed by the Department's investigator and she told the investigator that she was in Florida visiting friends. These statements were not made under oath and under penalty of perjury, but Respondent would not have been required to testify if she had appeared for the hearing.

The evidence supports a finding that Respondent truthfully reported on her May 12, 2005, application for assistance that she was living in Michigan. There is no evidence in the hearing record that Respondent misrepresented her circumstances to the Department. The issue here is whether she intended to continue living in Michigan and whether she intended her stay in Florida to be temporary.

A person's residence must be considered in light of a person's intent. In this case, Respondent informed the Department's investigator that it was her intent to visit friends in Florida and that she intended to return to Michigan. Respondent was under no duty to report a temporary stay in Florida. Further, the Department lacks the authority to establish a durational requirement placing a time limit on Respondent's intent to return to Michigan while in another state. See 7 CFR 273.3(a).

In this case, it is the Department's position that applying for a driver's license is clear and convincing evidence of an intent to living in that state. It certainly suggests that she did not intend to live in Michigan permanently.

However, is it not required that a FAP recipient intent to live in Michigan permanently, but only to live in Michigan while receiving Michigan FAP benefits for any purpose other than a vacation. BEM 220.

No evidence was presented on the record to suggest any missed interviews or noncompliance with the Department's requests for verification. No evidence was presented to suggest that Respondent has applied for or received assistance benefits from the state of Florida while absent from Michigan. The fact that Respondent applied for a Florida driver's license does not override her expressed intent to remain living in Michigan. Therefore, Respondent was entitled to the FAP benefits she received during her temporary absence from Michigan.

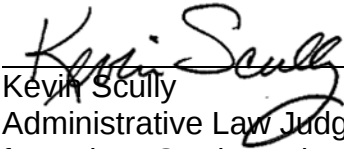
The Department has not established an Intentional Program Violation (IPV).

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 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/nr



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

Kimberly Kornoelje
121 Franklin SE
Grand Rapids, MI
49507

Kent County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

Petitioner

OIG- via electronic mail
PO Box 30062
Lansing, MI
48909-7562

Respondent

[REDACTED] - via first class mail
[REDACTED]
[REDACTED], FL
[REDACTED]