



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: January 3, 2020
MOAHR Docket No.: 19-008270
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. The hearing was adjourned and rescheduled as an in-person hearing at Respondent's request on October 30, 2019. After due notice, an in-person hearing was held on December 5, 2019, from Grand Rapids, Michigan. The Department was represented by Chad Essebagers, 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 changes of household income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 12-41.

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, p 23.
3. Respondent reported on his [REDACTED], application for assistance that he was not receiving any income. Exhibit A, p 18.
4. On October 3, 2016, the Department notified Respondent that he was eligible for a \$194 monthly allotment of Food Assistance Program (FAP) benefits as a group of one receiving no income. Exhibit A, pp 46-49.
5. On October 31, 2016, the Department notified Respondent that he was eligible for a \$194 monthly allotment of Food Assistance Program (FAP) benefits as a group of one receiving no income. Exhibit A, pp 50-53.
6. On September 9, 2017, the Department notified Respondent that he was eligible for a \$192 monthly allotment of Food Assistance Program (FAP) benefits as a group of one receiving a \$ [REDACTED] gross monthly income. Exhibit A, pp 54-58.
7. On February 14, 2018, the Department notified Respondent that he was eligible for a \$192 monthly allotment of Food Assistance Program (FAP) benefits from October 1, 2017, through August 31, 2018, and a \$194 monthly allotment from April 1, 2017, through September 30, 2017, which was based on a \$ [REDACTED] gross monthly income.
8. Respondent received Food Assistance Program (FAP) benefits totaling \$3,619 from September 1, 2016, through April 30, 2018. Exhibit A, pp 65-68.
9. On July 10, 2019, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$2,045 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-8.
10. The Department's OIG filed a hearing request on July 10, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
11. This was Respondent's first established IPV.
12. 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 (January 1, 2016), 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.

A donation to an individual by family or friends is the individual's unearned income. Bridges counts the gross amount actually received, if the individual making the donation and the recipient are not members of any common eligibility determination group. Department of Health and Human Services Bridges Eligibility Manual (BEM) 503 (October 1, 2019), p 11.

The Department will enter loan proceeds in the unearned income logical unit of work. The Department excludes funds an individual has borrowed provided it is a bona fide loan. This includes a loan by oral agreement if it is made into a bona fide loan. Bona fide loan means all the following are present:

- A loan contract or the lender's written statement clearly indicating the borrower's indebtedness.
- An acknowledgment from the borrower of the loan obligation.
- The borrower's expressed intent to repay the loan by pledging real or individual property or anticipated income.

BEM 503, p 24.

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 household income. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (October 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 (April 1, 2019), p 7. A pended 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.

On an application for assistance dated [REDACTED], Respondent acknowledged the duty to report changes of household income. 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 September 2, 2016, application 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 September 2, 2016, application for assistance that he was not receiving any income.

On October 3, 2016, and October 31, 2016, the Department notified Respondent that he was approved for the maximum monthly allotment of FAP benefits for a group of one receiving no income. On September 9, 2017, the Department notified Respondent that he was eligible for the maximum allotment of FAP benefits based on a \$[REDACTED] gross monthly income. On February 14, 2018, the Department notified Respondent that he was eligible for ongoing FAP benefits based on a \$[REDACTED] gross monthly income.

The Department alleges that Respondent failed to disclose unearned income from September 1, 2016, through April 30, 2018. Respondent does not deny receiving money from a family member, but claims that the money he was using to pay his expenses was not a contribution, but was a loan, which he was required to pay back.

Respondent had a duty to report all unearned income to the Department, and BEM 503 requires that loan proceeds be recorded as unearned income, although this income will be excluded if the loan meets the definition of a “bona fide loan.” Respondent failed to report the loan on his application for assistance. If Respondent had reported that he was receiving the proceeds of a loan on a monthly basis, the Department would have requested verification that the loan met the Department’s definition of a “bona fide loan.”

Respondent does not dispute that he received \$[REDACTED] a month from September 1, 2016, through April 30, 2018. Respondent failed to establish that the funds he received on a monthly basis were a bona fide loan, or that he has, or intends to repay a loan. Therefore, the funds Respondent received on a monthly basis meet the Department’s definition of unearned income, and are not excluded by BEM 503 as a “bona fide loan.”

Respondent received FAP benefits totaling \$3,619 from September 1, 2016, through April 30, 2018. If Respondent had reported receiving unearned income of \$1,000 per month during that period, then he would have been eligible for \$1,574 of those benefits. Therefore, Respondent received a \$2,045 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 is also suspected for a client who is alleged to have trafficked FAP benefits. 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 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 September 19, 2016. 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 that he was receiving \$ [REDACTED] of unearned income per month, and failed to establish that the funds he received were a bona fide loan. If Respondent had reported the funds he was receiving, he would have been given the opportunity to verify that he had entered into a bona fide loan. Respondent does not dispute that he received money each month from a family member. The hearing record does not establish by clear and convincing evidence that Respondent was aware that by failing to enter into a bona fide loan it would mean that that the funds he received would meet the Department's definition of a family contribution.

This Administrative Law Judge finds that the Department has not presented clear and convincing evidence that Respondent intentionally failed to report he was receiving family contributions for the purposes of becoming eligible for FAP benefits. Respondent was not eligible for all the FAP benefits he received as a result of failing to report the contributions he was receiving each month, but this failure to report meets the Department's definition of client error.

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. Respondent did receive an OI of Food Assistance Program (FAP) benefits in the amount of \$2,045.

3. The Department is ORDERED to initiate recoupment procedures for the amount of \$2,045 as client error in accordance with Department policy.

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

Kimberly Kornoelje
121 Franklin SE
Grand Rapids, MI 49507

Kent County, DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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