



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: September 16, 2020  
MOAHR Docket No.: 20-001579  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Landis Lain**

### **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, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on September 15, 2020, from Lansing, Michigan. The Department was represented by Scott Matweijczyk, 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 receiving benefits for 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. The Department's OIG filed a hearing request on February 5, 2020, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG **has** requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent **was** aware of the responsibility to disclose employment and income.
5. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is August 1, 2018-March 31, 2019 (fraud period).
7. During the fraud period, Respondent was issued \$1,117.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,117.
9. This was Respondent's **first** alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and **was not** returned by the United States Postal Services as undeliverable.

### **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

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 to .3015.

Effective January 1, 2016, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking overissuances 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, or
  - the total 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. BAM 720, pp 12-13 (1/1/2016)(Emphasis added).

### **Intentional Program Violation**

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The Respondent intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The Respondent was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The Respondent has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 700, p 7 (1/1/2016; BAM 720, p 1 (1/1/2016)).

An IPV requires that the Department establish by clear and convincing evidence that the Respondent has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720; see also 7 CFR 273. Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

### **Disqualification**

A Respondent who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p 2. Respondents are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p 16. CDC Respondents who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p 1 (4/1/2016). A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p 16.

This was Respondent's first instance of an IPV. Therefore, a 12-month disqualification is required.

### **Overissuance**

**When a Respondent group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2016).**

**Clear and convincing** proof means that the **evidence** presented by a party during the trial must be highly and substantially more probable to be true than not and the trier of fact must have a firm belief or conviction in its factuality.

This Administrative Law Judge finds:

On [REDACTED], Respondent signed a DHS-1171 acknowledging his rights and responsibilities. At that time, the Subject reported no monthly income. Respondent did not report any disability that would affect his ability to report timely and accurately (Exhibit 1).

On his DHS-1171 dated April 5, 2019, Respondent reported working at [REDACTED] (Exhibit 2). On April 17, 2019, during an interview with Mr. Kurecka, Respondent reported that he had been working at [REDACTED] since 2018 (Exhibits 3,12). Respondent submitted check stubs from [REDACTED] dated March 11, 2019, March 18, 2019, and March 25, 2019 (Exhibits 4,5).

On August 26, 2019, Ms. Welch sent a DHS-5586 Earnings Request to [REDACTED] [REDACTED], owner of [REDACTED], submitted a handwritten payroll journal (Exhibit 6).

On October 3, 2019, Respondent's daughter, [REDACTED], submitted a copy of her Power of Attorney (Exhibit 7) to the OIG Agent. She also submitted a copy of the checks from [REDACTED] that Respondent deposited into his [REDACTED] account and Respondent's W-2 from 2018. The W-2 reported that Respondent received \$ [REDACTED] in income (Exhibits 8 and 9).

The OIG Agent sent a subpoena to [REDACTED] to obtain a copy of Respondent's employee file and payroll journal. [REDACTED], owner of [REDACTED], reported that Respondent began working for [REDACTED] on June 8, 2018, and was terminated on May 30, 2019. [REDACTED] submitted Respondent's payroll from the time period (Exhibit 10).

The OIG Agent sent a subpoena to [REDACTED]. A copy of Respondent's checks deposited into his [REDACTED] account matched the payroll journal submitted by [REDACTED] at [REDACTED] (gross minus taxes) (Exhibit 11).

On October 17, 2019, the OIG Agent interviewed Eligibility Specialist, Stephen Kurecka. Mr. Kurecka denied telling Respondent that he did not need to report his income from employment. Mr. Kurecka stated Respondent didn't report income from employment until he contacted Respondent regarding the wage match in March 2019. When asked, Mr. Kurecka stated he would never tell any MDHHS client not to report income (Exhibit 12). Respondent's actions resulted in an overissuance of FAP benefits.

The Department has established by the necessary competent, substantial and material evidence on the record that it was acting in compliance with Department policy when it determined that Respondent failed to notify the Department of his earned income and when it determined that Respondent committed an Intentional Program Violation.

### **DECISION AND ORDER**

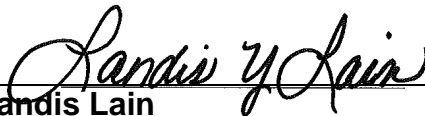
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of FAP benefits in the amount of \$1,117.00.

The Department is ORDERED to initiate recoupment procedures for the amount of \$1,117.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from receiving FAP benefits for the requested twelve months from September 15, 2020, forward in accordance with Department policy.

LL/hb

  
\_\_\_\_\_  
**Landis Lain**  
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**

Kent County, DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

**Petitioner**

OIG via electronic mail

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED], MI