



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: December 9, 2020
MOAHR Docket No.: 20-003039
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 November 19, 2020. The Department was represented by Stephanie Picca, 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 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 November 27, 2017, Respondent acknowledged his duties and responsibilities including the duty to report changes of employment status and increases of earned 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 10-35.

2. Respondent acknowledged under penalties of perjury that his November 27, 2017, 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 26.
3. Respondent reported on his November 27, 2017, application for assistance that he was not employed and was not receiving any income. Exhibit A, pp 20-21.
4. On November 27, 2017, Respondent provided the Department with a document showing that his employer would be temporarily shutting down on November 26, 2017, with a return to work date of January 14, 2018. Exhibit A, p 36.
5. On December 9, 2017, the Department notified Respondent that he was eligible for Food Assistance Program (FAP) benefits as a household of two receiving unearned income in the gross monthly amount of \$[REDACTED] but no earned income from employment. Exhibit A, pp 37-41.
6. On March 30, 2018, the Department received Respondent's Semi-Annual Contact Report (DHS-1046) where he reported that no one in his household of two was receiving any income from employment. Exhibit A, pp 41-42.
7. Respondent's signature on his March 30, 2018, Semi-Annual Contact Report was a certification that the statements he made to the Department were true and correct to the best of his knowledge. Exhibit A, p 43.
8. On April 2, 2018, the Department notified Respondent that he was eligible for Food Assistance Program (FAP) benefits as a household of two receiving unearned income in the gross monthly amount of \$[REDACTED] but no earned income from employment. Exhibit A, pp 44-47.
9. Respondent received a bi-weekly Family Independence Program (FIP) grant of \$79 from February 1, 2018, through December 15, 2018. Exhibit A, pp 51-53.
10. Respondent failed to report to the Department that he continued to work for his employer during his employer's temporary shut down and received earned income from January 19, 2018, September 28, 2018. Exhibit A, pp 48-50.
11. Respondent received monthly Retirement, Survivors, and Disability Insurance (RSDI) in the gross monthly amount of \$792. Exhibit A, pp 54-56.
12. Respondent received unemployment compensation benefits from December 9, 2017, through March 17, 2018. Exhibit A, pp 57-58.
13. Respondent received Food Assistance Program (FAP) benefits as a household of two totaling \$2,383 from March 1, 2018, through September 30, 2018. Exhibit A, pp 74-75.

14. The Department's representative testified that the overissuance of Food Assistance Program (FAP) benefits has been established. No evidence was presented on the record that Respondent has requested a hearing protesting the recoupment of the Food Assistance Program (FAP) overissuance.
15. On May 14, 2020, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$2,239 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-7 and 81-82.
16. The Department's OIG filed a hearing request on [REDACTED] [REDACTED] [REDACTED] to establish an that Respondent Intentional Program Violation (IPV). Exhibit A, p 3.
17. This was Respondent's second established IPV. Exhibit A, p 80.
18. 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) 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.

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 within 10 days of receiving the first payment reflecting the change. Changes that must be reported include changes of employment status and increases of earned income. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (July 1, 2020), 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 (July 1, 2020), 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 November 27, 2017, Respondent acknowledged the duty to report changes of employment status and increases of earned income on an application for assistance. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent had reported that his employer would be temporarily shutting down and the Department notified him that he was eligible for FAP benefits as a household of two receiving some income but [REDACTED] income from employment.

Respondent failed to report that his employment was not temporarily shut down and that he continued to receive earned income from employment. As a result of the earned income Respondent failed to report to the Department in a timely manner, he received an overissuance of FAP benefits. The Department has established a \$2,239 overissuance of FAP benefits and no evidence was presented on the record that Respondent filed a timely request for a hearing protesting the establishment of that debt.

Intentional Program Violation

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.*

Respondent acknowledged the duties and responsibilities of receiving FAP benefits on an application for assistance dated November 27, 2017. Respondent acknowledged under penalties of perjury that his November 27, 2017, 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 November 27, 2017, that his employer would be temporarily closing and that he would not be receiving any earned income from employment. On March 30, 2018, Respondent reported that no one in his household was receiving any income from employment. As a result of Respondent's failure to report the earned income from employment that he was receiving, 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 he continued to be employed after reporting that his employer would temporarily shut down, and he failed to report the earned income he continued to receive for the purposes of maintaining his eligibility for 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. 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 record evidence indicates that this is Respondent's second established IPV violation.


The Department has 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 established by clear and convincing evidence that Respondent committed an IPV.
2. It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program (FAP) for a period of 24 months.

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

Carisa Drake
190 East Michigan
Battle Creek, MI
49016

Calhoun 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], MI
[REDACTED]