



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: December 16, 2020
MOAHR Docket No.: 20-004744
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 December 2, 2020. The Department was represented by Courtney Burnell, 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. Respondent is the mother of a child born on [REDACTED] and [REDACTED] [REDACTED] is the father. Exhibit A, p 71.
2. On a Redetermination (DHS-1010) form received by the Department on April 29, 2015, Respondent acknowledged her duties and responsibilities including the duty to report persons in the home and 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 13-18.

3. Respondent acknowledged under penalties of perjury that her April 29, 2015, Redetermination 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 18.
4. Respondent reported on her April 29, 2015, Redetermination form that she was living with her two daughters at [REDACTED] MI [REDACTED] Exhibit A, p 14.
5. On a Redetermination (DHS-1010) form received by the Department on April 28, 2016, Respondent acknowledged her duties and responsibilities including the duty to report persons in the home and 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 25-30.
6. Respondent acknowledged under penalties of perjury that her April 28, 2016, Redetermination 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 30.
7. Respondent reported on her April 28, 2016, Redetermination form that she was living with her two daughters at [REDACTED] MI [REDACTED] Exhibit A, p 26.
8. On May 26, 2016, the Department notified Respondent that she was eligible for Food Assistance Program (FAP) benefits as a household of one not receiving any income. Exhibit A, pp 55-60.
9. On a Redetermination (DHS-1010) form received by the Department on April 26, 2017, Respondent acknowledged her duties and responsibilities including the duty to report persons in the home and 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 31-38.
10. Respondent acknowledged under penalties of perjury that her April 26, 2017, Redetermination 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 38.
11. Respondent reported on her April 26, 2017, Redetermination form that she was living with her two daughters at [REDACTED] MI [REDACTED] Exhibit A, p 32.
12. On May 12, 2017, the Department notified Respondent that she was eligible for Food Assistance Program (FAP) benefits as a household of one not receiving any income. Exhibit A, pp 61-65.
13. On a Redetermination (DHS-1010) received by the Department on April 27, 2018, Respondent acknowledged her duties and responsibilities including the

duty to report persons in the home and 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 39-46.

14. Respondent acknowledged under penalties of perjury that her April 27, 2018, Redetermination 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 45.
15. Respondent reported on her April 27, 2018, Redetermination form that she was living with her two daughters at [REDACTED] MI [REDACTED] Exhibit A, p 40.
16. On May 4, 2018, the Department notified Respondent that she was eligible for Food Assistance Program (FAP) benefits as a household of one not receiving any income. Exhibit A, pp 66-70.
17. On a Redetermination (DHS-1010) form received by the Department on April 23, 2019, Respondent acknowledged her duties and responsibilities including the duty to report persons in the home and 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 47-54.
18. Respondent acknowledged under penalties of perjury that her April 23, 2019, Redetermination 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 54.
19. Respondent reported on her April 23, 2019, Redetermination form that she was living with her two daughters at [REDACTED] MI [REDACTED] Exhibit A, p 48.
20. The address on file with the Michigan Department of State for [REDACTED] [REDACTED] is [REDACTED] MI [REDACTED] Exhibit A, p 85.
21. On June 16, 2010, Mr. [REDACTED] registered to vote in Wayne County using the address [REDACTED] MI [REDACTED] Exhibit A, p 86.
22. Mr. [REDACTED] registered three automobiles under the address [REDACTED] MI [REDACTED] Exhibit A, pp 87-88.
23. Mr. [REDACTED] started employment with Wayne County and reported his home address to his employer as [REDACTED] MI [REDACTED] Exhibit A, pp 89-93.
24. Mr. [REDACTED] started employment with Chrysler Group LLC on October 24, 2018 and reported his home address to his employer as [REDACTED] Detroit, [REDACTED] Exhibit A, pp 94-97.

25. The home located at [REDACTED] [REDACTED] [REDACTED] MI [REDACTED] was purchased on land contract by the father of [REDACTED] [REDACTED] [REDACTED]. The home transferred to Mr. [REDACTED] mother upon his father's death. The home was foreclosed upon on or around October 7, 2019. 73-84
26. Respondent received Food Assistance Program (FAP) benefits totaling \$7,708 from June 1, 2015, through May 31, 2019. Exhibit A, p 100, 131, 163, and 194.
27. The Department's OIG filed a hearing request on June 24, 2020, to establish that Respondent committed an Intentional Program Violation (IPV). Exhibit A, p 3.
28. On June 24, 2020, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$2,660 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 7-8 and 216-218.
29. This was Respondent's first established IPV.
30. A notice of hearing was mailed to Respondent at the last known address and was 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 person in the home and all household 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.

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. Parents and their children under age 22 must be included in the same FAP benefit group. Department of Human Services Bridges Eligibility Manual (BEM) 212 (July 1, 2019), p 1.

Respondent acknowledged the duty to report changes to her circumstance affecting her eligibility to receive FAP benefits including persons in the home and all household income, on Redetermination (DHS-1010) forms received by the Department on April 29, 2015, April 28, 2016, April 26, 2017, April 27, 2018, and April 23, 2019. Respondent acknowledged under penalties of perjury that each of her Redetermination forms were examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Each of those Redetermination forms had been addressed to

Respondent at [REDACTED] [REDACTED] [REDACTED] MI [REDACTED] where Respondent reported that she was living with her two daughters. After processing each of the Redetermination forms, the Department notified Respondent of her ongoing eligibility for FAP benefits as a household of one not receiving any income.

Respondent received FAP benefits as a household of one not receiving any income totaling \$7,708 from June 1, 2015, through May 31, 2019.

[REDACTED] [REDACTED] is the father of one of Respondent's children that she reported to be living in her home at [REDACTED] [REDACTED] MI [REDACTED]. Respondent's home was owned by Mr. [REDACTED] father and then his mother upon his father's passing. The home was foreclosed upon on or around October 7, 2019.

Mr. [REDACTED] residence on record with the Michigan Department of State was [REDACTED] [REDACTED] MI, for his driver's license, automobile registration, and voter registration. Mr. [REDACTED] also reported that address to be is home residence to two employers on April 30, 1997 and October 24, 2018.

The Department alleges that Mr. [REDACTED] was living with Respondent at [REDACTED] [REDACTED] and her two children. As the father of one of Respondent's children, Mr. [REDACTED] would have been a mandatory member of Respondent's FAP benefit group.

The hearing record does not contain any direct evidence, in the form of witness statements, video or photographic evidence, or admissions from Respondent, that Mr. [REDACTED] was living with her in her home. Instead, the Department rests wholly on circumstantial evidence and information reported to the Michigan Department of State.

The Department's representative presented as a knowledgeable witness who provided a credible account of an investigation into Respondent's household and documents showing the home address of Mr. [REDACTED]. As there was no credible and persuasive explanation to the contrary, this Administrative Law Judge finds that Mr. [REDACTED] was "living with" Respondent and was a mandatory member of Respondent's FAP benefit group as defined by BEM 212 as the father of one of the children.

Mr. [REDACTED] was employed by Wayne County and received earned income from August 12, 2011, through November 9, 2017. Mr. [REDACTED] was also employed by Chrysler and received earned income from December 7, 2018, through March 20, 2020. None of this income was reported to the Department and should have been countable towards Respondent's eligibility for FAP benefits.

Respondent received FAP benefits totaling \$7,708 as a household of one not receiving any income from June 1, 2015, through May 31, 2019. If the income of Mr. [REDACTED] had been reported to the Department, then Respondent would have been eligible for FAP benefits totaling \$5,048 during that same period. Therefore, Respondent received a \$2,660 overissuance of FAP benefits.

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 Redetermination (DHS-1010) forms received by the Department on April 29, 2015, April 28, 2016, April 26, 2017, April 27, 2018, and April 23, 2019, including the duty to truthfully and accurately report persons in her home and all 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 each of her Redetermination forms were examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Respondent reported on each of her Redetermination forms that she was living at [REDACTED] MI, with her two daughters.

Respondent failed to report that the father of one of her children was living in the home at [REDACTED] and that the father, Mr. [REDACTED] was employed and receiving earned income. As a result of Respondent's failure to report the presence of a mandatory FAP benefit group member in the home, Respondent 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 Mr. [REDACTED] was living in her home for the purposes of maintaining her eligibility for FAP benefits that she 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 record evidence indicates that this is Respondent's first 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. Respondent did receive an OI of Food Assistance Program (FAP) benefits in the amount of \$2,660.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$2,660 in accordance with Department policy.
4. It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program (FAP) for a period of 12 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

Denise McCoggle
27260 Plymouth Rd
Redford, MI
48239

Wayne 15 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]