



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: March 8, 2021
MOAHR Docket No.: 20-005115
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. After due notice, telephone hearing was held on January 26, 2021, from Lansing, Michigan. The Department was represented by Brent Brown, Regulation Agent of the Office of Inspector General (OIG). Respondent represented herself.

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], 2016, Respondent acknowledged her duties and responsibilities including the duty to report changes of employment status and increases 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 9-41.
2. Respondent acknowledged under penalties of perjury that her October 24, 2016, 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 23.

3. Respondent reported on her [REDACTED], 2016, application for assistance that she was living with her [REDACTED]-year-old daughter and her [REDACTED]-year-old son. Respondent did not report any employment on the application but that the only household income was social security benefits. Exhibit A, pp 17-18.
4. Respondent reported on her [REDACTED], 2016, application form that her son was enrolled in college full time. Exhibit A, p 21.
5. Respondent failed to report that her son started employment on May 14, 2016, and received earned income from January 6, 2017, through February 16, 2018. Exhibit A, pp 42-49.
6. On September 7, 2017, the Department received Petitioner's Redetermination (DHS-1010) where she again acknowledged the duties and responsibilities of receiving Food Assistance Program (FAP) benefits including the duty to report all household income. Exhibit A, pp 50-57.
7. Respondent acknowledged under penalties of perjury that her September 7, 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 56.
8. Respondent reported on her September 7, 2017, Redetermination form that she was living with her daughter and son, but that she did not usually buy and fix food with them. Exhibit A, p 51.
9. Respondent reported on her September 7, 2017, Redetermination form that social security benefits were the only household income. Exhibit A, p 54.
10. Respondent received Food Assistance Program (FAP) benefits totaling \$1,410 from March 1, 2017, through March 31, 2018. Exhibit A, pp 58-60.
11. The Department's representative testified that the Department has already established the debt for the period of March 1, 2017, to March 31, 2017, and provided the client due process regarding the Food Assistance Program (FAP) overissuance. Exhibit A, p 1.
12. The Department's OIG filed a hearing request on July 14, 2020, to establish that Respondent committed an Intentional Program Violation (IPV). Exhibit A, p 3.
13. On July 14, 2020, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$1,410 overpayment. Exhibit A, pp 86-87.
14. On July 14, 2020, the Department sent Respondent a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-7.
15. 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.

An intentional program violation consists of having intentionally made a false or misleading statement, or misrepresented, concealed, or withheld facts. 7 CFR 273.16(c)(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.*

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 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 (January 1, 2021), 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 reside in an eligible living situation. Parents and their children under 22 years of age who live together must be in the same FAP benefit group. Department of Human Services Bridges Eligibility Manual (BEM) 212 (July 1, 2019), p 1.

On an application for assistance dated [REDACTED], 2016, 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 her [REDACTED], 2016, application form was examined by or read to her, and to the best of her knowledge, contained facts that were true and complete. Respondent reported that she was living with her daughter and her son, and that the only household income was social security benefits.

The only evidence that Respondent's son was living with her is her signed application and redetermination forms. If Respondent's son was not living in her home, then she

would be under no duty to report the son's income. This would also be consistent with the fact that Respondent received FAP benefits as a household of two.

On September 7, 2017, Respondent reported on a Redetermination form that her son did not purchase and prepare food with her. It is not clear whether Respondent was reporting that her son did not live in her home full time, or that the son purchased and prepared food separately. No evidence of another caretaker of Respondent's son was presented on the record, and as her son under the age of 22, he would have been a mandatory FAP benefit group member if living with Respondent. BEM 212.

Respondent also reported on her [REDACTED], 2016, application that her son was attending college full time. As a college student with no reported employment, Respondent's son would have been an ineligible household member for FAP benefits.

The hearing record supports a finding that Respondent received FAP benefits as a household of two consisting of herself and her daughter. Insufficient evidence was presented on the record to establish why Respondent's son was not included in the FAP benefits household. If the son was ineligible based on his status as a college student, this was an incorrect application of policy because he was employed. The hearing record does not support a finding that Respondent's eligibility for FAP benefits was determined during the period of alleged overissuance as a household of three. If Respondent's son was not part of the household for some other reason other than his status as a student, then it is not clear that Respondent had a duty to report his income.


The hearing record supports a finding that if there was a duty for Respondent to report her son's income, that Respondent failed to report this information in error.

Therefore, the Department has not established an Intentional Program Violation (IPV) because the Department failed to establish that Respondent intentionally failed to report her son's income.

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 the Department **HAS NOT** established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV).

KS/nr



Kevin Scully
Administrative Law Judge
for Elizabeth Hertel, 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

Petitioner

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

Wayne 19 County DHHS- via electronic
mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

DHHS

Susan Noel
26355 Michigan Ave
Inkster, MI
48141

Respondent

[REDACTED] - via first class mail
[REDACTED]
MI
[REDACTED]