



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: April 2, 2021
MOAHR Docket No.: 20-006699
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 March 9, 2021. The Department was represented by Nicole Heinz-Hosking, 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 [REDACTED] [REDACTED] Respondent acknowledged her 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 9-15.

2. Respondent reported on her [REDACTED] [REDACTED] application for assistance that she was working. Exhibit A, p 14.
3. Respondent received Food Assistance Program (FAP) benefits totaling \$651 from July 1, 2019, through September 30, 2019. Exhibit A, p 38.
4. Department records indicate that during an eligibility interview conducted on April 4, 2018, that her husband was employed and that her employment had ended. Exhibit A, pp 16-18.
5. Respondent reported to the Department on April 4, 2019, that she lives with her three children and that her husband is in the home half of the time. Exhibit A, pp 16-18.
6. On April 16, 2019, the Department notified Respondent that she was eligible for Food Assistance Program (FAP) benefits as a household of five receiving earned income in the gross monthly amount of [REDACTED] and unearned income in the gross monthly amount of [REDACTED]. Exhibit A, pp 19-24.
7. Respondent started employment on April 23, 2019, and received earned income from May 3, 2019, through August 23, 2019. Exhibit A, pp 26-28.
8. Respondent started other employment on August 22, 2019, and received earned income from September 6, 2019, through November 15, 2019. Exhibit A, pp 29-30.
9. Respondent's husband started employment on October 2, 2017, and received earned income from August 2, 2019, through November 22, 2019. Exhibit A, pp 35-37.
10. Respondent's husband started other employment on January 11, 2019, and received earned income from January 18, 2019, through November 8, 2019. Exhibit A, pp 31-33.
11. The Department's OIG filed a hearing request on [REDACTED] [REDACTED] to establish that Respondent committed an Intentional Program Violation (IPV). Exhibit A, p 2.
12. On September 18, 2020, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$651 overpayment. Exhibit A, pp 49-51.
13. On September 18, 2020, the Department sent Respondent a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-6.
14. This was Respondent's first established IPV.

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.

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.

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. Spouses who are legally married and live together must be in the same group. Department of Human Services Bridges Eligibility Manual (BEM) 212 (October 1, 2020), 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 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, 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 an application for assistance dated [REDACTED] [REDACTED] Respondent acknowledged the duty to report any 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. Respondent reported to the Department that she is married and that her husband is employed. Respondent reported that her employment had recently ended. On April 16, 2019, the Department notified Respondent that she was eligible for FAP benefits as a household of five people receiving earned income in the gross monthly amount of \$[REDACTED] and unearned income consisting of child support and social security benefits in the gross monthly amount of \$[REDACTED]

Respondent's husband was employed and received earned income from August 2, 2019, through November 22, 2019. Respondent's husband started other employment on January 11, 2019, and received earned income from January 18, 2019, through November 8, 2019.

Respondent failed to report when she started employment on April 23, 2019, and received earned income from May 3, 2019, through August 23, 2019. Respondent failed to report when she started other employment on August 22, 2019, and received earned income from September 6, 2019, through November 15, 2019. If Respondent had reported receiving her May 3, 2019 paycheck in a timely manner, then the

Department would have redetermined her eligibility for ongoing FAP benefits by the first benefits period after June 4, 2019.

Respondent received FAP benefits totaling \$651 from July 1, 2019, through September 30, 2019. Respondent's eligibility for FAP benefits during that period was not based on the earned income she was receiving. If Respondent had reported her earned income from employment in a timely manner, she would not have been eligible for any FAP benefits because her total gross household income exceeded the limit for FAP benefits. Therefore, Respondent received a \$651 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 an application for assistance dated April 3, 2019. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

On April 4, 2019, the Department notified Respondent that she was eligible for FAP benefits as a household of five receiving earned income from her husband's employment, social security benefits, and child support. Respondent failed to report when she started employment on April 23, 2019, or the earned income she received through September 30, 2019. As a result of Respondent's failure to report the earned income from employment she received during that period, she 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 her earned income from employment 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 if 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 \$651.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$651 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 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

Jackson County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

DHHS

Tamara Little
301 E. Louis Glick Hwy.
Jackson, MI
49201

Respondent

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