



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: March 26, 2021
MOAHR Docket No.: 20-007546
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 2, 2021. The Department was represented by Karrie Felenchak, Regulation Agent of the Office of Inspector General (OIG). Respondent represented himself.

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] [REDACTED] Respondent acknowledged his duties and responsibilities including the duty to report any felony convictions involving controlled substances. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 9-14.
2. Respondent reported on his [REDACTED] [REDACTED] [REDACTED] application form that he had not been convicted of a drug-related felony that occurred after August 22, 1996. Exhibit A, p 11.

3. Department records indicate that Respondent reported having a drug felony in 2010, and that he did not purchase and prepare food with his father. Exhibit A, p 71.
4. On May 21, 2019, the Department notified Respondent that he was eligible for Food Assistance Program (FAP) benefits as a household of one receiving the maximum allotment of benefits. Exhibit A, pp 61-66.
5. Respondent was convicted by a jury on December 7, 2005 of Deliver/Manufacturing a Controlled Substance. Exhibit A, pp 67-68.
6. Respondent pleaded guilty on November 19, 2011, to Delivery/Manufacturing a Controlled Substance. Exhibit A, pp 69-70.
7. Respondent received Food Assistance Program (FAP) benefits totaling \$2,006 from May 20, 2019, through March 31, 2020. Exhibit A, p 72.
8. The Department's OIG filed a hearing request on [REDACTED] [REDACTED] [REDACTED] to establish that Respondent committed an Intentional Program Violation (IPV). Exhibit A, p 2.
9. On September 15, 2020, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$2,006 overpayment. Exhibit A, pp 81-82.
10. On September 15, 2020, the Department sent Respondent a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-6.
11. This was Respondent's first established IPV.

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 any felony convictions involving controlled substances. 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.

On an application for assistance dated [REDACTED] [REDACTED] [REDACTED] Respondent acknowledged the duty to report changes to his circumstances including felony convictions involving

controlled substances. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Respondent reported on his [REDACTED] application form that he had not been convicted of any a drug-related felony that occurred after August 22, 1996. Department records indicate that Respondent reported having a drug felony in 2010.

Respondent failed to fully report his circumstances to the Department. Respondent disclosed having one felony conviction involving controlled substances, and if this was true, he would have remained eligible for FAP benefits.

However, Respondent was convicted of two separate felony offenses where each offense occurred after August 22, 1996. Having more than one felony conviction involving controlled substances made Respondent ineligible for any FAP benefits.

Respondent received a \$74 prorated allotment of FAP benefits in May of 2019, based on his application date. Respondent then received a \$192 monthly allotment of FAP benefits in each month through March of 2020, which was the maximum allotment of benefits for a household of one. If Respondent had truthfully reported both of his felony convictions involving controlled substances, then he would not have been eligible for any of the FAP benefits that he received. Therefore, Respondent received a \$2,006 overissuance of FAP benefits from May 20, 2019, through March 31, 2020.

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 [REDACTED], including the duty to report felony convictions involving controlled substances occurring after August 22, 1996. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Respondent initially report having no felony convictions involving controlled substances. Later, Respondent admitting having one felony conviction, but denied having more than one, which allowed him to remain eligible for FAP benefits.

During his administrative hearing on March 2, 2021, Respondent testified that he mistakenly reported having only one felony conviction involving controlled substances. Respondent argues that he was confused by the questions on the application form.

Respondent does not dispute that he has more than one felony conviction with each separate offense occurring after August 22, 1996. The only evidence that Respondent did not intentionally misrepresent the number of times he had been convicted of a felony offense involving controlled substances is his own self-serving testimony.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report having more than one felony conviction involving controlled substances for the purposes of becoming eligible 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. 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 \$2,006.
3. The Department is ORDERED to initiate recoupment procedures for \$2,006 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

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

 via first class mail
, MI