



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: March 16, 2020  
MOAHR Docket No.: 19-012234  
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 February 20, 2020, from Lansing, Michigan. The Department was represented by Julie Price, Regulation Agent of the Office of Inspector General (OIG). Respondent represented herself, and her husband [REDACTED] testified on her behalf.

### **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 January 2, 2017, Respondent acknowledged her duties and responsibilities including the duty to report all countable assets. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 10-55.

2. Respondent acknowledged under penalties of perjury that her January 2, 2017, 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, pp 37-38.
3. Respondent reported on her January 2, 2017, application form that she is married to the father of her children. Exhibit A, p 18.
4. Respondent reported on her January 2, 2017, application for assistance that no one in her household possessed any countable assets. Exhibit A, pp 23-28.
5. On January 27, 2017, the Department notified Respondent that she was eligible for Food Assistance Program (FAP) benefits as a household of five. Exhibit A, pp 56-62.
6. Respondent failed to report that her husband has an ownership interest in a home in Detroit, Michigan that is not her primary residence, and the value of the property exceeds \$5,000. Exhibit A, pp 67-73.
7. Respondent received Food Assistance Program (FAP) benefits totaling \$4,540 from January 2, 2017, through September 30, 2017. Exhibit A, pp 63-64.
8. On October 28, 2019, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$4,540 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-8.
9. The Department's OIG filed a hearing request on October 28, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
10. This was Respondent's first established IPV.
11. 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) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.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 (January 1, 2016), 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 resides in an eligible living situation. Spouses and their children must be included in the same FAP household. Department of Human Services Bridges Eligibility Manual (BEM) 212 (July 1, 2019), p 1.

Assets means cash, any other personal property and real property. Real property is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property. Personal property is any item subject to ownership that is not real property. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the availability tests and is not excluded. Available means that someone in the asset group has the legal right to use or dispose of the asset. Department of Human Services Bridges Eligibility Manual (BEM) 400 (July 1, 2017), pp 1-7.

The asset limit for a household to remain eligible for any FAP benefits was \$5,000 in 2017. BEM 400.

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 assets possessed by household members. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (October 1, 2019), 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 (April 1, 2019), 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 January 2, 2017, Respondent acknowledged the duty to report any countable assets possessed by household members. 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 January 2, 2017, 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 on her January 2, 2017, application for assistance that no one in her household possessed any countable assets.

Respondent failed to report that her husband held an ownership interest in a home that is not her primary residence. As her husband and father of her children, Respondent's husband is a mandatory member of her FAP household, and his real property assets are countable towards the household eligibility for FAP benefits. Since the real property is not the primary residence of the household, it is not an excludable asset. Because the value of the property exceeds \$5,000, the household was not eligible for any FAP benefits.

Respondent received FAP benefits totaling \$4,540 from January 2, 2017, through September 30, 2017. If Respondent had reported her husband's real property in a timely manner, the household would not have been eligible for any FAP benefits during that period. Therefore, Respondent received a \$4,540 overissuance of FAP benefits.

### **Intentional Program Violation**

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and

- The client was clearly and correctly instructed regarding the reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits the understanding or ability to fulfill reporting responsibilities.

BAM 700, p 7, BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 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 (emphasis in original); 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 January 2, 2017. These duties included the duty to report any countable assets possessed by household members. 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 January 2, 2017, 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 on her January 2, 2017, application form that no one in the household possessed any countable assets.

Respondent failed to report her husband's ownership interest in a home in Detroit, Michigan. If Respondent had reported her husband's ownership in that property in a timely manner, the Department would have closed her FAP benefits.

Respondent testified that she was not aware of the property and did not intentionally fail to disclose it to the Department. Respondent's husband testified that he concealed the property from his wife.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the factfinder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), cert den, 318 US 783 (1943).

FAP trafficking is a fraudulent transfer of benefits that must be established by clear and convincing evidence and must never be presumed. Fraud may be established by circumstantial evidence and can be inferred from the evidence with facts which are inconsistent with an honest person. See *Foodland Distributors v Al-Naimi*, 220 Mich App 453 (1996), p 381.

This Administrative Law Judge find that Respondent's testimony that she discovered her husband's ownership interest in property that made the household ineligible for any FAP benefits right after the Department became aware of the property to be self-serving and lacks credibility. Respondent had accepted the duty on January 2, 2017, to truthfully and completely report her circumstances to the Department as a condition of accepting public benefits. The evidence supports a finding that Respondent either knew of the real property or should have. It is not disputed that the property caused the household to be ineligible for FAP benefits. Further, this Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report this property to the Department.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to disclose ownership interest in real property for the purposes of becoming eligible for, and maintaining eligibility for FAP benefits that the household 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 (July 1, 2013), 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.

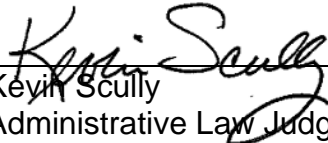
The Department has established an Intentional Program Violation (IPV).

**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 \$4,540.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$4,540 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

  
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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**

Linda Gooden  
25620 W. 8 Mile Rd  
Southfield, MI  
48033

Oakland 3 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]  
MI