



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 12, 2020
MOAHR Docket No.: 19-013644
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 Stephanie Janowiak, Regulation Agent of the Office of Inspector General (OIG). Respondent represented herself.

ISSUES

1. Did Respondent receive an overissuance (OI) of Medical Assistance (MA) and 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 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 11-50.

2. 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. Exhibit A, p 32.
3. Respondent reported on her [REDACTED], 2016, application for assistance that no one in her household was employed. Exhibit A, p 25.
4. Respondent reported on her [REDACTED], 2016, application for assistance that she did not claim anyone as a dependent on her federal tax return, and that she does not purchase or prepare food with anyone else in the household. Exhibit A, p 17.
5. On February 9, 2016, the Department notified Respondent that she was eligible for Medical Assistance (MA). Exhibit A, pp 51-53.
6. On February 9, 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 54-57.
7. On February 9, 2016, the Department notified Respondent that she was not eligible for State Emergency Relief (SER) assistance. Exhibit A, pp 58-61.
8. Respondent failed to report that she had returned to work on April 19, 2016, and received earned income from April 28, 2016, through January 12, 2017. Exhibit A, pp 62-67.
9. On January 30, 2017, the Department received Respondent's Redetermination (DHS-1010) form where she reported that her employment was ending as of January 3, 2017. Exhibit A, pp 68-75.
10. Respondent received Food Assistance Program (FAP) benefits totaling \$1,552 from June 1, 2016, through December 31, 2016. Exhibit A, pp 76-77.
11. Respondent used her Food Assistance Program (FAP) benefits to make purchases from February 17, 2016, through February 4, 2017. Exhibit A, pp 78-87.
12. Respondent received Medical Assistance (MA) with a value of \$3,692.37 from August 1, 2016, through December 31, 2016. Exhibit A, p 107.
13. The Department's representative testified that a Notice of Overissuance (DHS-4358) was mailed to Respondent on October 3, 2019, instructing her that she had received a \$1,098 overissuance of Food Assistance Program (FAP) benefits.
14. On December 20, 2019, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$4,790.37 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-7, and 110-112.

15. The Department's OIG filed a hearing request on December 20, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.

16. This was Respondent's first established IPV.

17. 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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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.

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 earned income. 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 [REDACTED], 2016, Respondent acknowledged 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. 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 did not claim any dependents on her federal income tax return. Respondent reported that she did not purchase or prepare food with anyone else. Respondent reported that she was not currently employed. On February 9, 2016, the Department notified Respondent that she was eligible for MA, and eligible for FAP benefits as a household of one not receiving any income.

Respondent failed to report when she returned to work on April 19, 2016, and received earned income from April 28, 2016, through January 12, 2017. If Respondent had reported her first paycheck after returning to work in a timely manner, the Department would have redetermined her eligibility for ongoing FAP benefits by the first benefit period after May 30, 2016.

Respondent received FAP benefits totaling \$1,552 from June 1, 2016, through December 31, 2016. If Respondent had reported her earned income, then she would have been eligible for only \$454 of those benefits. Therefore, Respondent received a \$1,098 overissuance of FAP benefits.

The income limit to participate in the Healthy Michigan Plan (HMP) is 133% of the federal poverty level. Department of Health and Human Services Reference Table Manual (RFT) 246 (April 1, 2014), p 1.

Respondent failed to report that she was receiving earned income from employment as of April 28, 2016, but her income was below 133% of the federal poverty level at that time. Respondent received an earned income in the gross monthly amount of \$1,447 in August of 2016, which was 146% of the federal poverty level for a household of one in 2016. Respondent's earned income exceeded 133% of the federal poverty level from August 1, 2016, through December 31, 2016. Respondent received MA with a value of \$3,692.37 during that period that she was not eligible for due to her earned income. Therefore, Respondent received a \$3,692.37 overissuance of MA 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 MA and FAP benefits on an application for assistance dated February 1, 2016, 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.

Respondent failed to report when she returned to work on April 19, 2016, or when she began receiving earned income on April 28, 2016. As a result of Respondent's failure to report this income, she received an overissuance of MA and FAP benefits. During the time she was receiving FAP benefits that she was not eligible for, she was using those benefits to make purchases.

Respondent testified that she did not conceal her income from the Department and had reported when she returned to work. Respondent was unable to provide evidence supporting her claim of having reported her increase of income in a timely manner.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report an increase of earned income for the purposes of maintaining her eligibility for MA and 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 (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 \$1,098.
3. Respondent did receive an OI of Medical Assistance (MA) benefits in the amount of \$3,692.37.
4. The Department is ORDERED to initiate recoupment procedures for the amount of \$4,790.37 in accordance with Department policy.
5. 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

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
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48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED], MI
[REDACTED]