



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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Date Mailed: February 8, 2021
MOAHR Docket No.: 20-006938
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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 21, 2021. The Department was represented by Shannon Davis, 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 ██████████, 2017, 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 10-31.

2. Respondent acknowledged under penalties of perjury that her [REDACTED], 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, p 29.
3. Respondent reported on her [REDACTED], 2017, that no one in her household of four people was employed. Exhibit A, p 22.
4. On June 1, 2017, the Department notified Respondent that she was eligible for Food Assistance Program (FAP) benefits effective July 1, 2017, based on a household of four receiving no income. Exhibit A, pp 73-76.
5. On an application for assistance dated [REDACTED], 2018, 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 32-70.
6. Respondent acknowledged under penalties of perjury that her [REDACTED], 2018, 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 51.
7. Respondent reported on her [REDACTED], 2018, application for assistance that no one in her household of four was employed. Exhibit A, p 44.
8. On January 22, 2018, during a routine eligibility interview, Respondent reported to the Department that no one in her household was employed. Exhibit A, pp 71-72.
9. On January 23, 2018, the Department notified Respondent that she was eligible for Food Assistance Program (FAP) benefits as a household of four not receiving any income. Exhibit A, pp 77-83.
10. On February 5, 2018, the Department notified Respondent that she was not eligible for Food Assistance Program (FAP) benefits as of March 1, 2018, because her household income exceeded the net monthly income limit. Exhibit A, pp 84-87.
11. Respondent failed to report when she started employment on October 17, 2017, and received earned income from October 31, 2017, through July 17, 2018. Exhibit A, pp 88-90.
12. Respondent failed to report when the father of her children started employment on January 11, 2018, and received earned income from January 19, 2018, through February 15, 2018. Exhibit A, pp 91-92.
13. Respondent received Food Assistance Program (FAP) benefits totaling \$970 from January 1, 2018, through February 28, 2018. Exhibit A, p 93.

14. The Department's representative testified that Respondent was notified on July 31, 2020, that she had received an overissuance of Food Assistance Program (FAP) benefits that would be recouped.
15. The Department's OIG filed a hearing request on July 31, 2020, to establish that Respondent committed an Intentional Program Violation (IPV). Exhibit A, p 3.
16. On July 31, 2020, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$772 overpayment. Exhibit A, pp 99-100.
17. On July 31, 2020, the Department sent Respondent a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-7.
18. This was Respondent's first established IPV.
19. 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.

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 (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 (July 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.

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 person resides in an eligible living situation. Parents and their children must be included in the same FAP benefit group. Department of Human Services Bridges Eligibility Manual (BEM) 212 (October 1, 2020), p 1.

On an application for assistance dated [REDACTED], 2017, 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. On January 16, 2018, the Department notified Respondent that she was eligible for FAP benefits as a household of four not receiving any income as of July 1, 2017.

On an application for assistance dated [REDACTED], 2018, Respondent again 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] 6, 2018, 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 [REDACTED], 2018, application for assistance that no one in her household was employed. During a routine eligibility interview on January 22, 2018, Respondent reported that no one in the household was employed.

Respondent's reported false information on her [REDACTED], 2018, application for assistance, and reported false information during her January 22, 2018, eligibility interview. The father of Respondent's children, a mandatory FAP benefit group member, had started employment on [REDACTED], 2018, which was five days before she filed her application for food assistance. Respondent had also failed to report that she had been employed since October 17, 2017.

Respondent received FAP benefits totaling \$970 from January 1, 2018, through February 28, 2018. If Respondent had truthfully and completely reported the earned income being received by members of her FAP benefit group, then she would have been eligible for only \$198 of those benefits. On February 5, 2018, the Department had discovered that Respondent was receiving income that had not been reported to the Department and closed her FAP benefits. On July 31, 2020, the Department notified Respondent that she had received an overissuance of FAP benefits that would be recouped. No evidence was presented during the hearing that Respondent filed a timely request for a hearing protesting the recoupment of those overissued FAP benefits. Therefore, the Department has established a \$772 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 applications for assistance dated [REDACTED], 2017, through January 16, 2018, including the duty to report any 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 falsely reported on her [REDACTED], 2018, application form that no one in her household was employed. Respondent falsely reported that no one in her household was receiving any income during a routine eligibility interview on January 22, 2018. The father of Respondent's children had started employment on January 11, 2018, and Respondent had been working since October 17, 2017. None of the income from either of these jobs was reported to the Department in a timely manner.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report her income and the income of her father's children, 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 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. 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

Jackie Stempel
2700 Baker Street
PO Box 4290
Muskegon Heights, MI
49444

Muskegon 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
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