



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: December 15, 2023
MOAHR Docket No.: 23-001656
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, a telephone hearing was held on November 21, 2023, from Lansing, Michigan. The Department was represented by Assistant Attorney General Zachary Smitt. Amanda Zimmerman, Tracy Upshaw, and Alaina Darget testified on behalf of the Department. Respondent was represented by his attorney, Scott R. Ruark, and Respondent was present for the hearing.

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. Respondent was an ongoing recipient of Food Assistance Program (FAP) benefits when he acknowledged his duties and responsibilities including the duty to report all household income on a Redetermination form received by the Department on January [REDACTED] 2016. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 18-23.

2. Respondent acknowledged under penalties of perjury that his January ■ 2016, Redetermination form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Exhibit A, p 23.
3. Respondent reported on his January ■ 2016, Redetermination form that his daughter was the only person in his household of four that was receiving any income. Exhibit A, p 21.
4. On February ■ 2016, the Department notified Respondent that he was eligible for Food Assistance Program (FAP) benefits as a household of four receiving earned income in the gross monthly amount of \$■ and no other income. Exhibit A, pp 24-28.
5. On August ■ 2016, the Department notified Respondent all four members of his household were eligible for Medical Assistance (MA). Exhibit A, pp 35-38.
6. On a Semi-Annual Contact Report received by the Department on July ■ 2016, Respondent reported that his income had not changed from the \$■ per month that was being applied towards his eligibility for Food Assistance Program (FAP) benefits. Exhibit A, pp 39-40.
7. Respondent's signature on his July ■ 2016, Semi-Annual Contact report certified that the statements on that form were true and correct to this best of his knowledge. Exhibit A, p 40.
8. On September ■ 2016, the Department notified Respondent that he was eligible for Food Assistance Program (FAP) benefits as a household of four not receiving any income. Exhibit A, pp 41-44.
9. On January ■ 2017, the Department received Respondent's Redetermination form where he reported that his daughter was the only person in his household of four receiving any income. Exhibit A, pp 45-52.
10. Respondent acknowledged under penalties of perjury that his January ■ 2017, Redetermination form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Exhibit A, p 51.
11. On July ■ 2017, the Department received Respondent's Redetermination form where he reported that his daughter was the only person in his household of four receiving any income. Exhibit A, pp 53-60.
12. Respondent acknowledged under penalties of perjury that his July ■ 2017, Redetermination form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Exhibit A, p 59.
13. On August ■ 2017, the Department notified Respondent that all four members of his household were eligible for Medical Assistance (MA). Exhibit A, pp 85-88.

14. On January █ 2018, the Department received Respondent's Redetermination form where he reported that his daughter was the only person in his household of four receiving any income. Exhibit A, pp 61-68.
15. Respondent acknowledged under penalties of perjury that his January █ 2018, Redetermination form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Exhibit A, p 67.
16. On February █ 2017, the Department notified Respondent that he was eligible for Food Assistance Program (FAP) benefits as a household of four not receiving any income. Exhibit A, pp 75-78.
17. Department records indicate that on February █ 2018, Respondent submitted business taxes for 2015 and 2016 and those tax forms showed that █ █ did not turn a profit in those years. Respondent also reported that the companies that were linked to him were out of business. Exhibit A, p 93.
18. On April █ 2018, the Department notified Respondent that he was eligible for Food Assistance Program (FAP) benefits as a household of four receiving earned income in the gross monthly amount of \$█ and no other income. Exhibit A, pp 79-84.
19. On June █ 2018, the Department notified Respondent that all four members of his household were eligible for Medical Assistance (MA). Exhibit A, pp 89-92.
20. On March █ 2013, Respondent had signed Articles of Incorporation for █ █ as an incorporator. Exhibit A, p 95.
21. Respondent is registered as the president, treasurer, secretary, and director of █ █ █ a domestic profit corporation incorporated in Michigan on March █ 2018. Exhibit A, pp 97-98.
22. Respondent's spouse is the resident agent for █ █ a domestic profit corporation incorporated in Michigan on May █ 2009. Exhibit A, pp 99-100.
23. A bank account held by █ received deposits totaling \$█ from August 1, 2016, through August 31, 2016. Exhibit A, pp 104-507.
24. On December █ 2016, the bank account held by █. received a \$█ deposit that was not reported to the Department. Exhibit A, p 120.
25. The bank account held by █ received a \$█ on January █ 2017, and a \$█ deposit on January █ 2017, that was not reported to the Department. Exhibit A, p 127.
26. On February █ 2017, the bank account held by █ received a \$█ deposit that was not reported to the Department. Exhibit A, p 132.

27. The bank account held by [REDACTED] received a \$ [REDACTED] deposit on March [REDACTED] 2017, and a \$ [REDACTED] deposit on March [REDACTED] 2017, that were not reported to the Department. Exhibit A, p 136.
28. The bank account held by [REDACTED] continued to receive deposits that were increasing in amount through October of 2018 but were not reported to the Department. Exhibit A, pp 101-507.
29. The Food Assistance Program (FAP) benefits granted to Respondent were used to make purchases from January 1, 2017, through November 2, 2018. Exhibit A, pp 513-529.
30. Respondent received Food Assistance Program (FAP) benefits totaling \$ [REDACTED] from February 1, 2017, through March 31, 2018. Exhibit A, pp 508-512.
31. Respondent received Medical Assistance (MA) with a value of \$ [REDACTED] from January 1, 2017, through February 28, 2019. Exhibit A, pp 530-547.
32. Respondent received Food Assistance Program (FAP) benefits totaling \$ [REDACTED] from July 1, 2018, through October 31, 2018. Exhibit A, pp 508-512.
33. The Department's OIG filed a hearing request on October 30, 2023, to establish that Respondent committed an Intentional Program Violation (IPV). Exhibit A, p 3.
34. On October 30, 2023, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ [REDACTED] overpayment. Exhibit A, pp 8-10.
35. On October 30, 2023, the Department sent Respondent a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 12-13.
36. This was Respondent's first established IPV.
37. 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 through 42 USC 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 through 42 CFR 420.25. The Department administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.103 through MCL 400.112k of the Social Welfare Act, MCL 400.1 *et seq.*

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 increases of household income. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (October 1, 2023), 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 (November 1, 2023), p 7. A pending 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.

Individuals who run their own businesses are self-employed. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board. A person who provides child care in his or her home is considered to be self-employed. Rental income is sometimes counted as unearned income and sometimes as self-employment. The amount of self-employment income before any deductions is called total proceeds. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. Allowable expenses are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. Department of Human Services Bridges Eligibility Manual (BEM) 502 (October 1, 2019), pp 1-3.

As an ongoing recipient of FAP benefits, Respondent acknowledged the duties and responsibilities of receiving FAP benefits including the duty to report all household income on a Redetermination form received by the Department on January [REDACTED] 2016. 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 his January [REDACTED] 2016, Redetermination form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Respondent reported that the only source of income for his household of four was his daughter's earned income. On February [REDACTED] 2016, the Department notified Respondent that he was eligible for ongoing FAP benefits as a household of four received earned income in the gross monthly amount of \$[REDACTED] and no other income. Respondent and the other members of his household were also receiving MA benefits.

On March [REDACTED] 2023, Respondent had signed Articles of Incorporation for [REDACTED] [REDACTED] as an incorporator. A bank account held by [REDACTED] received a \$[REDACTED] deposit on December [REDACTED] 2016, that was not reported to the Department. The hearing record supports a finding that this deposit was an available resource of Respondent and that he failed to report this income in a timely manner. If Respondent had reported this deposit in a timely manner, the Department would have redetermined his eligibility for ongoing FAP benefits by the first benefit period after January 7, 2018.

Respondent received FAP benefits totaling \$[REDACTED] from February 1, 2017, through March 31, 2018. Respondent also received FAP benefits totaling \$[REDACTED] from July 1, 2018, through October 31, 2018. During that time period, the bank account held by [REDACTED] [REDACTED] continued to receive deposits that were not reported to the Department and these deposits fit the Department's definition of self-employment income.

Respondent failed to report the deposits received by [REDACTED], a corporation listing him as an incorporator, as self-employment income. For the purposes of determining eligibility for FAP benefits, Respondent had a duty to report the gross receipts of any self-employment income he received. Department policy allows recipients of self-employment income to deduct certain expenses from those gross receipts but also allows for a standard 25% expense deduction where actual expenses are not verified.

If Respondent had reported his income from [REDACTED] in February of 2017, he would have been eligible for a \$[REDACTED] monthly allotment of FAP benefits in that month. In March of 2017, Respondent's self-employment that had not been reported increased to \$[REDACTED]. The gross monthly income limit for a household of four was \$2,633 in March of 2017. Department of Health and Human Services Reference Table Manual (RFT) 250 (October 1, 2016), p 1. Respondent would not have been eligible for any FAP benefits after March 1, 2017, due to his unreported income. The hearing record supports a finding that Respondent received a \$[REDACTED] overissuance of FAP benefits due to his failure to report available self-employment income.

Healthy Michigan Program (HMP), a category of MA benefits for individuals not eligible for Medicare, has no asset limit but eligibility is determined based on an individual's modified adjusted gross income (MAGI), which is based on IRS rules and relies on federal tax information. Allied Painters Corp. received gross receipts totaling \$[REDACTED] in January of 2017, and this income was not reported to the Department in a timely manner. The hearing record supports a finding that this income was not reported to the Department in a timely manner, and no evidence was offered on the record that Respondent had reported a Schedule C tax form, which would have been the method of reporting business expenses as required by Department policy in BEM 502. Since Respondent had not reported self-employment, the Department had no reason to request that Respondent provide a Schedule C tax form.

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.

The hearing record supports a finding that Respondent received gross self-employment income exceeding 133% of the federal poverty level from January 1, 2017, through February 28, 2019. No evidence was presented on the record that Respondent had submitted tax returns as verification of self-employment expenses. The hearing record supports a finding that Respondent and his family received MA benefits under the HMP category in the value of \$[REDACTED]. If Respondent had reported his self-employment in a timely manner, he would have been eligible for only \$[REDACTED] of those benefits. Therefore, the hearing record supports a finding that Respondent received a \$[REDACTED] overissuance of MA benefits due to unreported self-employment income.

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 was an ongoing recipient of FAP benefits when he acknowledged the duties and responsibilities of receiving FAP benefits on a Redetermination form received by the Department on January 28, 2016. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. It is the Department's practice to provide pamphlet material to eligible FAP recipients advising them of their duty to report all household income including self-employment income in a timely manner. The hearing record supports a finding that Respondent was provided with notice that he was required to report self-employment income.

Respondent signed Articles of Incorporation as an incorporator of [REDACTED] on March [REDACTED] 2013. The hearing record supports a finding that Respondent failed to report an interest in this company in a timely manner. A bank account held by [REDACTED] [REDACTED] received regular deposits that were not reported to the Department but fit the Department's definition of self-employment income. For the purposes of determining eligibility for FAP benefits, countable self-employment income is determined from the gross receipts of the business. Actual expenses are allowed as a deduction where verified receipts are submitted, but a 25% flat deduction is granted otherwise. In this case, no income or expenses were reported in a timely manner.

Department records support a finding that on August [REDACTED] 2018, Respondent had reported that [REDACTED] did not turn a profit in 2015 and 2016. Recipients of FAP benefits are not required to report business profits but are required to report gross receipts as income. For the purposes of determining eligibility for FAP benefits, Respondent had a duty to report the gross self-employment and then take deductions allowed by BEM 502 that were verified by receipts. In this case, Respondent failed to report self-employment income and that unreported income resulted in an overissuance of FAP benefits.

On January [REDACTED] 2017, Respondent reported to the Department that his daughter's income was the sole source of income for his household of four after acknowledging that his statements were true and complete to the best of his knowledge. Respondent was an ongoing recipient of FAP benefits based on his reports that his family of four was not

receiving any self-employment income. This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report his gross income from self-employment for the purposes of maintaining his eligibility for FAP benefits that he would not have been eligible for otherwise.

Respondent also received MA benefits under the HMP category. The self-employment income Respondent received exceeded 133% of the federal poverty level and Respondent had failed to submit a Schedule C tax form in a timely manner that would have verified his adjusted gross income after expenses. The hearing record supports a finding that Respondent's failure to report his self-employment cause him to receive an overissuance of MA benefits based on his gross self-employment income.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report his self-employment income for the purposes of maintaining his eligibility for MA 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 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. Department of Health and Human Services Bridges Administrative Manual (BAM) 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 Intentional Program Violation (IPV).
2. Respondent did receive an overissuance of Food Assistance Program (FAP) benefits in the amount of \$ [REDACTED]
3. Respondent did receive an overissuance of Medical Assistance (MA) benefits in the amount of \$ [REDACTED]
4. The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] 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/dm



Kevin Scully
Administrative Law Judge
Michigan Office of Administrative Hearings
and Rules (MOAHR)

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

Via-Electronic Mail :

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Via-First Class Mail :

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