



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]
[REDACTED]

Date Mailed: January 10, 2024
MOAHR Docket No.: 23-003791
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 December 12, 2023, from Lansing, Michigan. The Department was represented by Ryan Feldt, 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 August [REDACTED] 2020, Respondent acknowledged his duties and responsibilities including the duty to report a change of residence or living in an institution where meals are provided. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 6-11.
2. Respondent failed to report to the Department that he was incarcerated in the [REDACTED] [REDACTED] [REDACTED] on December [REDACTED] 2022, where he remained until he was

transferred to a state prison on January [REDACTED] 2023. Respondent was incarcerated in prison through May 31, 2023, and beyond. Exhibit A, pp 13-14.

3. The Food Assistance Program (FAP) benefits granted to Respondent were used to make purchases from February 1, 2023, through April 27, 2023. Exhibit A, pp 17-18.
4. Respondent received Food Assistance Program (FAP) benefits totaling \$ [REDACTED] as a household of one from February 1, 2023, through May 31, 2023. Exhibit A, p 16.
5. The Department's OIG filed a hearing request on July 10, 2023, to establish that Respondent committed an Intentional Program Violation (IPV). Exhibit A, p 2.
6. On July 10, 2023, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ [REDACTED] overpayment. Exhibit A, pp 20-21.
7. On July 10, 2023, the Department sent Respondent a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 22-23.
8. This was Respondent's first established IPV.
9. 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

An “overissuance” is an amount owed because of benefits that are overpaid, which the Department must establish and collect. 7 CFR 273.18(a). 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.

A person is a resident of an institution when the institution provides the majority of his meals as part of its normal services. Residents of institutions are not eligible for FAP unless one of the following is true: The facility is authorized by the Food and Nutrition Service (FNS) to accept FAP benefits. The facility is an eligible group living facility; see BEM 615. The facility is a medical hospital and there is a plan for the person's return home; see Temporary Absence in this item. Department of Health and Human Services Bridges Eligibility Manual (BEM) 212 (January 1, 2022), p 8.

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 a change of residence and living in an institution where meals are provided. 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 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 August [REDACTED] 2020, Respondent acknowledged the duty to report a change of residence and being in an institution where meals are provided. 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 he was incarcerated in the [REDACTED] Jail, an institution where meals are provided as part of its normal operations, and then failed to report that he had been transferred to a state prison, another institution where meals are provided. If Respondent had reported that he was living in an institution where meals are provided, then the Department would have closed his FAP benefits by the first benefit period after January 3, 2023. Respondent received FAP benefits totaling \$[REDACTED] from February 1, 2023, through May 31, 2023, but was not eligible for any of those benefits as a resident of an institution where meals were provided. Therefore, Respondent received a \$[REDACTED] 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.*

The Department's representative presented as a knowledgeable witness who provided a credible account of an investigation of a FAP recipient that had been incarcerated.

Respondent acknowledged the duties and responsibilities of receiving FAP benefits on an application for assistance dated August [REDACTED] 2020. 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 changes to their housing including moving to an institution where meals are provided. The hearing record supports a finding that Respondent was provided with notice that he was required to report living in an institution where meals are provided including a jail or prison.

Respondent failed to report that he was incarcerated and continued to receive FAP benefits that he was not eligible for. Respondent's FAP benefits were used by someone not in his household of one to make purchases while he was in prison.

Respondent testified that he had suffered a concussion and that he did not intentionally violate the Department's policies regarding his duty to report changes to his circumstances.

Respondent did not offer any evidence that he suffered from a concussion or that the resulting mental impairments would have prevented his understanding that Department policy prohibited him from receiving food assistance while incarcerated. The hearing record supports a finding that Respondent continued to receive FAP benefits he was not eligible for, which were then transferred to a person not part of Respondent's household.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report when he was incarcerated in jail for the purposes of maintaining his eligibility 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 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.

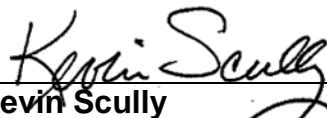
The Department has established an Intentional Program Violation (IPV).

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. The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] 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/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

