



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 30, 2024
MOAHR Docket No.: 23-006109
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 April 24, 2024, from Lansing, Michigan. The Department was represented by Connor Render, Regulation Agent of the Office of Inspector General (OIG). Respondent represented herself.

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 February [REDACTED] 2022, Respondent acknowledged her duties and responsibilities including the duty to report persons in the home and changes of household income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
2. Respondent reported on her February [REDACTED] 2022, application for assistance that she was living with her child and that she was employed.

3. Department records indicate that Respondent was interviewed on February █ 2022, and she confirmed that she was living with her child and that she was employed.
4. On March █ 2022, the Department notified Respondent that she was eligible for Food Assistance Program (FAP) benefits as a household of two receiving earned income in the gross monthly amount of \$█
5. On July █ 2022, the Department received Respondent's Renew Benefits form where she reported that she was living with her child and that she was employed.
6. On an application for assistance dated September █ 2022, Respondent reported that she was living with two children and that she was employed.
7. Department records indicate that the father of Respondent's children reported to the Department's investigator that he had been living in Respondent's residence since April of 2022.
8. Department records indicate that Respondent reported to the Department's investigator that the father of her children had been living in her residence since April of 2022.
9. The father of Respondent's child started employment on July 13, 2020, and received earned income from July 31, 2020, through September 9, 2022.
10. On June 26, 2021, the father of Respondent's child reported to the Michigan Department of State that he was living at █
11. Effective December 1, 2021, Respondent entered into a residential lease of an apartment located at █ along with the father of her child.
12. Respondent received Food Assistance Program (FAP) benefits totaling \$█ from June 1, 2022, through September 30, 2022.
13. The Department's OIG filed a hearing request on September 28, 2023, to establish that Respondent committed an Intentional Program Violation (IPV).
14. On September 28, 2023, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$█ overpayment.
15. On September 28, 2023, the Department sent Respondent a Request for Waiver of Disqualification Hearing (DHS-826).
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 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.

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 persons in the home and all household income. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (March 1, 2024), 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 February █ 2022, Respondent acknowledged the duty to report persons living in the home and all household income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

The hearing record supports a finding that the father of Respondent’s children was living in Respondent’s home as of April of 2022. Evidence supporting a finding that the father was living with Respondent includes the address on his driver’s license and the lease to Respondent’s apartment. If Respondent had reported that the father was living with her, the Department would have considered his income when determining the household’s eligibility for ongoing FAP benefits. If the father’s income had been included in the household’s income, the household would not have been eligible for any FAP benefits because gross household income exceeded the limit for them to receive any FAP benefits. Department of Health and Human Services Reference Table Manual (RFT) 250 (October 1, 2021), p 1.

If Respondent had reported that the father of her children was living in her household in April of 2022, the Department would have closed her FAP benefits by June 1, 2022. Respondent received FAP benefits totaling \$█ from June 1, 2022, through September 30, 2022. Respondent was not eligible for any of those benefits, and she received a \$█ 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 an application for assistance dated February █ 2022. 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 persons in the household and all household income. The hearing record supports a finding that Respondent was provided with notice that she was required to report that the father of her children was living in her home as well as his income.

Respondent credibly testified that she was pregnant in 2022, and that the father of her children would stay in her apartment to help her. Respondent credibly testified that the father would take time off from his work to spend more time with her and her child, which is supported by payroll records. Respondent testified that the father of her children was not living in her home all of the time but would leave periodically. Respondent testified that she was unable to contact her caseworker in a timely manner to report the father's coming and going from the household.

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 reside in an eligible living situation. Parents and their children must be in the same FAP group. Department of Human Services Bridges Eligibility Manual (BEM) 212 (Mach 1, 2024), p 1.

Neither Department policy nor federal regulations place a threshold on how long an adult must live in the home before being counted as a household member. Respondent does not deny that the father of her child spent some time in the household, and his name on the lease means that he had the legal right to stay there. Respondent had a duty to report that the father was living in the home, and if he left the home without a definite plan to return. In this case, there is no evidence that Respondent had ever notified the Department of the father's presence or that he had left the home.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally withheld reporting the presence of the father of Respondent's children in her home for the purposes of concealing his income and remaining eligible 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 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

Via-Electronic Mail :

Petitioner
OIG
**MDHHS-OIG-
HEARINGS@michigan.gov**

DHHS
Dawn Tromontine
Macomb County DHHS Sterling
Heights Dist.
**MDHHS-Macomb-36-
Hearings@michigan.gov**

Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

Respondent
[REDACTED]
[REDACTED]
[REDACTED]