



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: October 5, 2023
MOAHR Docket No.: 23-002425
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 September 12, 2023, from Lansing, Michigan. The Department was represented by Amanda Zimmerman, 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 August [REDACTED] 2020, Respondent acknowledged the duties and responsibilities of receiving Food Assistance Program (FAP) benefits. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, p 12-18.

2. Respondent reported on her August ■ 2020, application form that she was homeless but living in Macomb County, Michigan. Exhibit A, p 12.
3. Department records indicate that Respondent's August ■ 2020, application for assistance was submitted from a computer in Tucker, Georgia. Exhibit A, p 96.
4. Department records indicate that during an eligibility interview on August ■ 2020, Respondent reported to be living with her grandmother in Michigan. Exhibit A, pp 19-20.
5. On September ■ 2020, the Department notified Respondent that she was eligible for Food Assistance Program (FAP) benefits as a household of two by sending a Notice of Case Action to her reported mailing address in Michigan. Exhibit A, pp 21-28.
6. On a Redetermination form received by the Department on June ■ 2021, Respondent acknowledged the duties and responsibilities of receiving Food Assistance Program (FAP) benefits. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 29-33.
7. Respondent reported on her June ■ 2021, Redetermination form that she was homeless. Exhibit A, pp 29-33.
8. Department records indicate that Respondent's June ■ 2021, Redetermination form was submitted from a computer in Stone Mountain, Georgia. Exhibit A, p 96.
9. On an application for assistance dated August ■ 2021, Respondent acknowledged the duties and responsibilities of receiving Food Assistance Program (FAP) benefits. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 34-40.
10. Respondent reported on her August ■ 2021, application form that she was homeless but living in Macomb County, Michigan. Exhibit A, p 34.
11. Department records indicate that Respondent's August ■ 2021, application form was submitted from a computer in Stone Mountain, Georgia. Exhibit A, p 96.
12. Department records indicate that during an eligibility interview on August ■ 2021, Respondent reported to be living in Michigan with her grandmother. Exhibit A, pp 41-43.
13. On September ■ 2021, the Department notified Respondent that she was eligible for Food Assistance Program (FAP) benefits as a household of two by sending a Notice of Case Action to her reported mailing address in Michigan. Exhibit A, pp 44-51.

14. On an application for assistance dated August ■ 2022, Respondent acknowledged the duties and responsibilities of receiving Food Assistance Program (FAP) benefits. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 56-64.
15. Respondent reported on her August ■ 2022, application for assistance that she was homeless but living in Macomb County, Michigan. Exhibit A, pp 56-64.
16. Department records indicate that Respondent's August ■ 2022, application form was submitted from a computer in Grayson, Georgia. Exhibit A, p 96.
17. Department records indicate that during an eligibility interview on September ■ 2022, Respondent reported to be living in Michigan with her grandmother. Exhibit A, pp 65-71.
18. On July ■ 2020, Respondent filed a Certificate of Incorporation with the Georgia Secretary of State, and she is listed as an incorporator for a Domestic Nonprofit Corporation with a principal office address of ■ ■ ■ Stone Mountain, Georgia. Respondent reported the same address for herself to the Georgia Secretary of State. Exhibit A, pp 100-101.
19. On September ■ 2020, Respondent's child transferred out an elementary school in Michigan after reporting that her child would be home schooling in Georgia. Exhibit A, p 72.
20. From August 24, 2020, through September 30, 2022, Respondent's Food Assistance Program (FAP) benefits were used to make purchases predominantly at businesses located in the state of Georgia. The majority of those purchases were made in Stone Mountain, Georgia. Exhibit A, pp 76-95.
21. Respondent made only 31 purchases in the state of Michigan before September 19, 2022. Exhibit A, pp 76-95.
22. From August 24, 2020, through September 30, 2022, received Food Assistance Program (FAP) benefits totaling \$■. Exhibit A, pp 102-111.
23. The Department's OIG filed a hearing request on May 1, 2023, to establish that Respondent committed an Intentional Program Violation (IPV). Exhibit A, p 3.
24. On May ■ 2023, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$■ overpayment. Exhibit A, pp 113-115.
25. On May ■ 2023, the Department sent Respondent a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 7-8.
26. This was Respondent's first established IPV.

27. 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.

To be eligible for FAP benefits, a person must be a Michigan resident. A person is considered a resident under the FAP while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (July 1, 2020), pp 1-2. The Department is prohibited from imposing any durational residency requirements on the eligibility for FAP benefits. 7 CFR 273.3(a).

State agencies must adopt uniform standards to facilitate interoperability and portability nationwide. The term “interoperability” means the EBT system must enable benefits issued in the form of an EBT card to be redeemed in any state. 7 CFR 274.8(b)(10).

On an application for assistance dated August ■ 2020, Respondent acknowledged the duties and responsibilities of receiving FAP benefits. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent received FAP totaling \$ ■ from August 24, 2020, through September 30, 2022.

Respondent filed her August ■ 2020, application for assistance from a computer in Georgia and withdrew her child from a Michigan school on September ■ 2020. Respondent had filed a Certificate of Incorporation with the Georgia Secretary of State on July ■ 2020, listing herself as an incorporator for a Domestic Nonprofit Corporation located in Stone Mountain, Georgia.

The majority of purchases made with Respondent’s FAP benefits were made at businesses located in Stone Mountain, Georgia and relatively few were made in the state of Michigan. Despite the fact that Respondent maintained a mailing address in Michigan where her grandmother lived, the hearing record supports a finding that Respondent was living in the state of Georgia with her child. Respondent would continue using her FAP benefits to make purchases in Stone Mountain Georgia, where she had formed a nonprofit corporation, and would go on to file a Redetermination form and two additional application forms from computers in the state of Georgia.

This Administrative Law Judge finds that there is clear and consistent evidence that Respondent was not living in the state of Michigan and was not eligible for any of the FAP benefits she received from August 24, 2020, through September 30, 2022. Therefore, the Department has established 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.*

On application for assistance dated August [REDACTED] 2020, Respondent acknowledged the duties and responsibilities of receiving FAP benefits. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Respondent applied for Michigan FAP benefits from a computer in the state of Georgia, and then filed a Redetermination form from the state of Georgia to continue receiving FAP benefits. The hearing record supports a finding that during the time she was receiving FAP benefits granted to her by the state of Michigan, she was actually living in Georgia based on the purchases she made with FAP benefits in Georgia, the nonprofit corporation she formed in Georgia, and the withdrawal of her child from a Michigan school in order to home school the child in Georgia. The hearing record supports a finding that Respondent was not living in Michigan, but merely maintained a mailing address where she could maintain her eligibility for FAP benefits by claiming to live with her grandmother.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally reported that she was homeless living in Macomb County Michigan while she was actually living in Stone Mountain Georgia. As a result of Respondent's failure to truthfully report where she was living, Respondent received an \$[REDACTED] overissuance of FAP benefits.

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. 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
Chelsea McCune
Macomb County DHHS Warren Dist.
**MDHHS-Macomb-20-
Hearings@michigan.gov**

Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

Respondent

[REDACTED]
[REDACTED]
[REDACTED]