



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 5, 2023
MOAHR Docket No.: 23-004235
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 14, 2023, from Lansing, Michigan. The Department was represented by John Bower, 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 September [REDACTED] 2019, Respondent acknowledged her duties and responsibilities including 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. Exhibit A, pp 11-19.
2. Respondent reported on her September [REDACTED] 2019, application for assistance that she was living with her two children at [REDACTED] and that their father

was living outside the home. Respondent also reported that no one in the household was employed. Exhibit A, pp 11-19.

3. On an application for assistance dated October ■ 2019, Respondent acknowledged her duties and responsibilities including 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. Exhibit A, pp 36-41.
4. Respondent reported on her October ■ 2019, application for assistance that she was living with her two children at ■ and that their father was living outside the home. Respondent also reported that no one in the household was employed. Exhibit A, pp 36-41.
5. On an application for assistance dated January ■ 2020, Respondent acknowledged her duties and responsibilities including 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. Exhibit A, pp 42-48.
6. Respondent reported on her January ■ 2020, application for assistance that she was living with her two children at ■ and that their father was living outside the home. Respondent also reported that no one in the household was employed. Exhibit A, pp 42-48.
7. On an application for assistance dated March ■ 2020, Respondent acknowledged her duties and responsibilities including 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. Exhibit A, pp 49-54.
8. Respondent reported on her March ■ 2020, application for assistance that she was living with her two children at ■ and that their father was living outside the home. Respondent also reported that no one in the household was employed. Exhibit A, pp 49-54.
9. On an application for assistance dated July ■ 2020, Respondent acknowledged her duties and responsibilities including 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. Exhibit A, pp 55-60.
10. Respondent reported on her July ■ 2020, application for assistance that she was living with her three children at ■. Respondent also reported that no one in the household was employed. Exhibit A, pp 55-60.
11. On an application for assistance dated February ■ 2021, Respondent acknowledged her duties and responsibilities including 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. Exhibit A, pp 61-66.

12. Respondent reported on her February [REDACTED] 2021, application for assistance that she was living with her three children at [REDACTED] and that their father was living outside the home. Respondent also reported that no one in the household was employed. Exhibit A, pp 61-66.
13. On an application for assistance dated August [REDACTED] 2021, Respondent acknowledged her duties and responsibilities including 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. Exhibit A, pp 67-72.
14. Respondent reported on her August [REDACTED] 2021, application for assistance that she was living with her three children at [REDACTED]. Respondent also reported that no one in the household was employed. Exhibit A, pp 67-72.
15. On an application for assistance dated October [REDACTED] 2021, Respondent acknowledged her duties and responsibilities including 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. Exhibit A, 73-78.
16. Respondent reported on her October [REDACTED] 2021, application for assistance that she was living with her three children [REDACTED]. Respondent also reported that no one in the household was employed. Exhibit A, pp 73-78.
17. The father of Respondent's children reported to the Michigan Department of State that his home address was [REDACTED] since February 16, 2019. Exhibit A, p 34.
18. The father of Respondent's children is the registered owner of the residence located at [REDACTED]. Exhibit A, p 32.
19. The father of Respondent's children had been employed since July [REDACTED] 2018, and he received earned income July [REDACTED] 2018, through February 11, 2022, and he reported to his employer that his home address was [REDACTED] Exhibit A, pp 28-31.
20. Respondent received Food Assistance Program (FAP) benefits totaling \$[REDACTED] from October 1, 2019, through September 30, 2020. Exhibit A, pp 83-97.
21. Respondent received Food Assistance Program (FAP) benefits totaling \$[REDACTED] from February 1, 2021, through November 30, 2021. Exhibit A, pp 83-97.

22. The Department's OIG filed a hearing request on July 25, 2023, to establish that Respondent committed an Intentional Program Violation (IPV). Exhibit A, p 3.
23. On July [REDACTED] 2023, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$[REDACTED] overpayment. Exhibit A, pp 104-166.
24. On July [REDACTED] 2023, the Department sent Respondent a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-7.
25. This was Respondent's first established IPV.
26. 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.

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 benefit group. Department of Human Services Bridges Eligibility Manual (BEM) 212 (January 1, 2022), 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 living in the home and all 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.

On numerous applications for assistance, Respondent acknowledged the duty to report persons living in her 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. Respondent reported to the Department on each of her application forms that the father of her children was not living in the home and that no one in the home was employed.

The hearing record supports a finding that the father of Respondent’s children was living in the same home as Respondent because he is the owner of that residence and he reported that home to the Michigan Department of State as his home residence. The father of Respondent’s children also reported that address to his employer.

The father of Respondent's children was a mandatory member of the benefit group as a parent to members of the household, and the earned income from employment that he was receiving was countable towards the household's eligibility for FAP benefits. Respondent received FAP benefits totaling \$[REDACTED] from October 1, 2019, through September 30, 2020. If she had truthfully reported all household members and their income in a timely manner, she would have been eligible for \$1,033 of those benefits. Due to emergency FAP policy in place during that time and since Respondent was eligible for FAP benefits in three of those months, she would have received the maximum allotment available in those months even if she had reported all household income. Therefore, Respondent received a \$[REDACTED] overissuance of FAP benefits.

Respondent also received FAP benefits totaling \$[REDACTED] from February 1, 2021, through November 30, 2021. As a member of Respondent's household, the income the father of Respondent's children should have been countable towards the household's eligibility for FAP benefits during that period as well. If all household income had been applied towards Respondent's eligibility for FAP benefits, she would not have been eligible for any FAP benefits during that period. 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 household receiving FAP benefits that reported no significant source of income.

Respondent acknowledged the duties and responsibilities of receiving FAP benefits on numerous application forms. 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 persons in the home as well as all household income. The hearing record supports a finding that Respondent was provided with notice that it was her duty to report the father of her children living in her home as well as his income.

Respondent had reported that the father of her children was not living in her home. Later, she gave birth to another child with the same father, who is the registered owner of the residence where she was living. As a member of her household, Respondent had a duty to report the income of her children's father.

Respondent testified that she had an unstable relationship with the father of her children and that he was in and out of the home. Respondent failed to offer any evidence that the father was not living in her home.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report that the father of her children was living in her home 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 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).

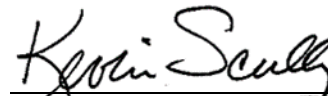
DECISION AND ORDER

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] from October 1, 2019, through September 30, 2020.

3. Respondent did receive an overissuance of Food Assistance Program (FAP) benefits in the amount of \$[REDACTED] from February 1, 2021, through November 30, 2021.
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 :

Petitioner
OIG
MDHHS-OIG-
HEARINGS@michigan.gov

DHHS
Jeanenne Broadnax
Wayne-Taylor-DHHS
MDHHS-Wayne-18-
Hearings@michigan.gov

Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

Respondent

[REDACTED]
[REDACTED]
[REDACTED]