



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 21, 2023
MOAHR Docket No.: 23-004662
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 29, 2023, from Lansing, Michigan. The Department was represented by John Bower, 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 September [REDACTED] 2014, Respondent acknowledged his duties and responsibilities including the duty to report substantial gambling winnings. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 9-43.
2. On January [REDACTED] 2021, Respondent received gambling winnings of \$[REDACTED] Exhibit A, p 44.

3. On January █ 2021, Respondent received gambling winnings of \$ █ Exhibit A, p 45.
4. On January █ 2021, Respondent received gambling winnings of \$ █ Exhibit A, p 46.
5. On January █ 2021, Respondent received gambling winnings of \$ █ Exhibit A, p 47.
6. On February █ 2021, Respondent received gambling winnings of █ Exhibit A, p 48.
7. On February █ 2021, Respondent received gambling winnings of \$ █ Exhibit A, p 49.
8. On February █ 2021, Respondent received gambling winnings of \$ █ Exhibit A, p 50.
9. On February █ 2021, Respondent received gambling winnings of \$ █ Exhibit A, p 51.
10. On March █ 2021, Respondent received gambling winnings of \$ █ Exhibit A, p 52.
11. On March █ 2021, Respondent received gambling winnings of \$ █ Exhibit A, p 53.
12. Respondent received Food Assistance Program (FAP) benefits totaling \$ █ in March of 2021. Exhibit A, p 60.
13. The Department's OIG filed a hearing request on August 9, 2023, to establish that Respondent committed an Intentional Program Violation (IPV). Exhibit A, p 2.
14. On August █ 2023, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ █ overpayment. Exhibit A, pp 66-67.
15. On August █ 2023, the Department sent Respondent a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-6.
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 when a member of the household receives substantial gambling winnings. 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.

The asset limit for FAP benefits is \$15,000, except that FAP groups cannot possess gambling winnings more than \$██████ Department of Health and Human Services Bridges Eligibility Manual (BEM) 400 (July 1, 2023), pp 5-6.

When FAP groups, no matter if they have an asset test, must report when they receive substantial lottery or gambling winning within 10 days of the date the group receives the winnings. Substantial lottery or gambling winnings is currently \$3,500 for a single payment. When the Department learns of a FAP group receiving a single lottery or gambling winning of \$3,500 or more, the Department will close the FAP case giving timely notice for the negative action. Department of Health and Human Services Bridges Eligibility Manual (BEM) 403 (October 1, 2020), p 1.

Substantial gambling winnings is a cash prize won in a single game, before taxes or other amounts are withheld, which is equal to or greater than the SNAP resource limit for elderly or disabled households.

On an application for assistance dated September █ 2014, Respondent acknowledged the duty to report substantial gambling winnings within 10 days. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Tax forms show that in January of 2021, Respondent received gambling winnings totaling \$██████ but no single payment exceeded \$3,500. Respondent's total gambling winnings in January of 2021 did not exceed the asset limit of \$4,250 until he received his final payment on January █ 2021. Since no single payment exceeded \$3,500, Respondent was under no duty to report his gambling winnings until January 30, 2021, when the winnings exceeded the asset limit of \$4,250. Respondent had 10 days to report that his winnings exceeded \$4,250, and the Department was required to act on that reported change within 10 days. If Respondent had reported gambling winnings exceeding \$4,250, the Department would have closed his FAP benefits, but this negative action would have been pended for 12 days, and Respondent's FAP benefits would have closed by the first benefit period after March 3, 2021.

On February █ 2021, Respondent received "substantial gambling winnings" in a single payment of \$4,500, and Respondent had a duty to report substantial gambling winnings to the Department within 10 days. If Respondent had reported his substantial gambling winnings, the Department would have closed his FAP benefits and would have given him

timely notice for the negative action as directed by BEM 403. This would have closed Respondent's FAP benefits by the first benefit period after March 8, 2021.

Respondent had a duty to report his gambling winnings, but the hearing record supports a finding that his FAP benefits would not have closed in March of 2021 if he had reported this change to his circumstances in a timely manner. If Respondent had reported his gambling winnings in a timely manner, the Department would have been required to give him timely notice, and his benefits would not have closed until April 1, 2021.

The hearing record supports a finding that Respondent received FAP benefits totaling \$[REDACTED] in April of 2021, and that he would not have been eligible for any of those benefits if he had reported his substantial gambling winnings in a timely manner. 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 that failed to report substantial gambling winnings.

Respondent acknowledged the duties and responsibilities of receiving FAP benefits on an application for assistance dated September [REDACTED] 2014, including the duty to report substantial gambling winnings. 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 substantial gambling winnings. The hearing record supports a finding that Respondent was provided with notice that had had been informed of his duty to report substantial gambling winnings.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report that he had received substantial gambling winnings for the purpose 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.

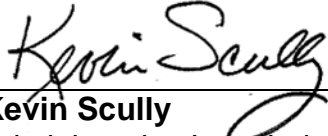
The Department has established an Intentional Program Violation (IPV).

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 \$██████
3. The Department is ORDERED to reduce the overissuance to \$██████ for the period April 1, 2021, through April 30, 2021, and initiate recoupment procedures 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
Pam Farnsworth
Monroe County DHHS
**MDHHS-Monroe-
Hearings@michigan.gov**

Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

Respondent

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