



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: January 4, 2024
MOAHR Docket No.: 23-004984
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [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 6, 2023, from Lansing, Michigan. The Department was represented by Brent Brown, 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 the 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 April [REDACTED] 2020, Respondent acknowledged her duties and responsibilities including the duty to report changes of residency and the receipt of benefits from another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 11-17.

2. Respondent travelled to Ohio where she used her Michigan Food Assistance Program (FAP) benefits to make purchases exclusively in Ohio from July 8, 2020, through February 26, 2021. Exhibit A, pp 26-27.
3. Respondent failed to report that she was employed in Ohio and received earned income from September 3, 2020, through October 30, 2020. Exhibit A, pp 38-37.
4. Respondent failed to report other employment in Ohio from February 6, 2021, through May 8, 2021. Exhibit A, pp 38-41.
5. The Respondent received Food Assistance Program (FAP) benefits totaling \$[REDACTED] from November 1, 2020, through February 28, 2021. Exhibit A, pp 53-54.
6. The Respondent received Medical Assistance (MA) benefits with a value of \$[REDACTED] from November 1, 2020, through February 28, 2021. Exhibit A, pp 56-58.
7. Respondent filed an application for food and medical assistance with the state of Ohio on November [REDACTED] 2020. Exhibit A, pp 43-51.
8. The Respondent received Medicaid benefits from the state of Ohio from November 23, 2020, through February of 2021. Exhibit A, p 42.
9. The Department's OIG filed a hearing request on August 18, 2023, to establish that Respondent committed an Intentional Program Violation (IPV). Exhibit A, p 3.
10. On August 18, 2023, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$[REDACTED] overpayment. Exhibit A, pp 60-62.
11. On August 18, 2023, the Department sent Respondent a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 7-8.
12. This was Respondent's first established IPV.
13. 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.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. Benefit duplication is prohibited except for MA and FAP in limited circumstances. Department of Health and Human Services Bridges Eligibility Manual (BEM) 222 (October 1, 2018), p 1.

The Department may not deny or terminate a resident's Medicaid eligibility because of that person's temporary absence from the state if the person intends to return when the

purpose of the absence has been accomplished, unless another state has determined that the person is a resident there for purposes of Medicaid. 42 CFR 435.403(j)(3).

On an application for assistance dated April [REDACTED] 2020, Respondent acknowledged the duties and responsibilities of receiving Michigan FAP and MA benefits. 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 Respondent travelled to Ohio where she used her FAP benefits to make purchases exclusively in Ohio from July 8, 2020, through February 26, 2021. While in Ohio, Respondent obtained employment, which she failed to report to the Department. Respondent also applied for food and medical assistance from the state of Ohio on November [REDACTED] 2020. While receiving ongoing Michigan FAP and MA benefits, Respondent was also receiving Ohio medical assistance from November of 2020, through February of 2021.

Respondent received Michigan MA benefits with a value of \$[REDACTED] from November 1, 2020, through February 28, 2021. She was not eligible for any of those Michigan MA benefits while concurrently receiving Ohio medical assistance. Therefore, Respondent received a \$[REDACTED] overissuance of Michigan MA benefits.

The hearing record supports a finding that Respondent was not living in Michigan after travelling to Ohio and establishing her residency there by applying for Ohio medical assistance. Respondent used her Michigan FAP benefits to make purchases exclusively in Ohio while she was not living in Michigan. Respondent was not eligible for any Michigan FAP benefits while living in Ohio as an Ohio resident receiving Ohio medical assistance. Respondent was not eligible for any of the Michigan FAP benefits she received from November 1, 2020, through February 28, 2021, and she received a \$[REDACTED] overissuance of Michigan 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 the 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 Michigan FAP and Michigan MA benefits on an application for assistance dated April [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 of residence and the receipt of benefits from another state. The hearing record supports a finding that Respondent was provided with notice that she was required to report if she was not living in Michigan or if she started receiving benefits from another state.

Respondent failed to report when she was not living in Michigan, which was established by the exclusive use of her Michigan FAP benefits in Ohio, by her obtaining employment in Ohio, and by establishing residence in Ohio through her acceptance of Ohio medical assistance benefits. Respondent received Ohio medical assistance concurrently with her Michigan FAP and MA benefits.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that the Respondent intentionally failed to report that she was not living in Michigan and that she received Ohio medical assistance for the purposes of maintaining her eligibility for Michigan FAP and MA 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 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. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. 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 Department has established an Intentional Program Violation (IPV).

A twelve-month disqualification from the Food Assistance Program (FAP) is appropriate in this case because although Respondent did receive concurrent food assistance, Respondent did not make a fraudulent statement or representation with respect to identity or place of residence. 7 CFR 273.16(b)(5). Respondent intentionally failed to report information to Michigan resulting in an overissuance of Michigan benefits, but truthfully reported her residency on her applications for assistance.

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, 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. Respondent did receive an overissuance of Medical Assistance (MA) with a value of \$[REDACTED]
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
Susan Noel
Wayne-Inkster-DHHS
**MDHHS-Wayne-19-
Hearings@michigan.gov**

Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

Respondent

[REDACTED]
[REDACTED]
[REDACTED]