



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 5, 2024
MOAHR Docket No.: 23-004985
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 December 6, 2023, from Lansing, Michigan. The Department was represented by Derrick Gentry, 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 July [REDACTED] 2022, Respondent acknowledged his duties and responsibilities including the duty to report changes of employment status and increases of earned 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 12-18.

2. Respondent acknowledged under penalties of perjury that his July [REDACTED] 2022, application form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Exhibit A, p 18.
3. Respondent reported on his January [REDACTED] 2022, application for assistance that he was not employed. Exhibit A, pp 15-16.
4. Department records indicate that on July [REDACTED] 2022, Respondent reported during an eligibility interview that he was employed. Exhibit A, p 22.
5. On August 3, 2022, the Department notified Respondent that he was eligible for Food Assistance Program (FAP) benefits as a household of one receiving earned income in the gross monthly amount of \$[REDACTED] Exhibit A, pp 26-33.
6. Respondent started employment on August [REDACTED] 2022, and he received earned income from that employment from August 19, 2022, through March 17, 2023. Exhibit A, pp 34-37.
7. Respondent received earned income from his employment totaling \$[REDACTED] in August of 2022, and \$[REDACTED] in September of 2022. Exhibit A, p 37.
8. Respondent received Food Assistance Program (FAP) benefits totaling \$[REDACTED] from October 1, 2022, through January 31, 2023. Exhibit A, pp 38-39.
9. The Department's OIG filed a hearing request on August 15, 2023, to establish that Respondent committed an Intentional Program Violation (IPV). Exhibit A, p 3.
10. On August 15, 2023, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$[REDACTED] overpayment. Exhibit A, pp 102-104.
11. On August 15, 2023, the Department sent Respondent a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 7-8.
12. This was Respondent's second 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

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.

On an application for assistance dated July [REDACTED] 2022, Respondent acknowledged the duty to report changes of employment status and increases of earned income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

On August █ 2022, the Department notified Respondent that he was eligible for FAP benefits as a household of one receiving earned income in the gross monthly amount of \$█. Respondent received two weekly paychecks in August of 2022, and his actual earned income was in the gross monthly amount of \$█. Respondent's actual earned income for September was \$█. The gross monthly income limit for a household of one was \$1,396 in August of 2022. Department of Health and Human Services Reference Table Manual (RFT) 250 (October 1, 2021), p 1.

Respondent received FAP benefits totaling \$█ from October 1, 2022, through January 31, 2023, but these benefits did not take into account his actual earned income from employment during that period. On July █ 2023, the Department notified Respondent on a Notice of Overissuance that he had received a \$█ overissuance of FAP benefits based on his failure to truthfully report his earned income in a timely manner. No evidence was presented on the record that Respondent filed a timely hearing request protesting the recoupment of FAP benefits. 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.*

Respondent acknowledged the duties and responsibilities of receiving FAP benefits on an application for assistance dated July █ 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 truthfully and accurately report all earned income from employment in a timely manner. The hearing record supports a finding that Respondent was notified of his duty to report his earned income from employment in a timely manner.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to accurately report the earned income from employment that he was receiving for the purposes 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 second 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 24 months.

KS/dm



Kevin Scully

Administrative Law Judge
Michigan Office of Administrative Hearings
and Rules (MOAHR)

