



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

MARLON I. BROWN, DPA
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 12, 2024
MOAHR Docket No.: 23-005923
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 April 2, 2024, from Lansing, Michigan. The Department was represented by Walter Broadworth, 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 October [REDACTED] 2021, 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 8-23.

2. Respondent acknowledged under penalties of perjury that her October ■ 2021, application form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 16.
3. Respondent reported on her October ■ 2021, application for assistance that she was living in Michigan with her son. Exhibit A, pp 8-23.
4. On October ■ 2021, the Department notified Respondent that she was eligible for Food Assistance Program (FAP) benefits as a household of two. Exhibit A, pp 24-31.
5. On August ■ 2021, Respondent had filed an application for food assistance with the state of North Carolina as a household of two. Exhibit A, pp 36-40.
6. Respondent reported to the state of North Carolina on her August ■ 2021, application form that she was a homeless North Carolina resident. Exhibit A, p 36.
7. On July ■ 2022, Respondent requested that her food assistance from the state of North Carolina continue, and that she her son were living in North Carolina. Exhibit A, pp 41-46.
8. Respondent used her Michigan Food Assistance Program (FAP) benefits to make purchases exclusively in North Carolina from October 12, 2021, through October 20, 2022. Exhibit A, pp 50-59.
9. The Respondent received Food Assistance Program (FAP) benefits totaling \$■■■■ from October 1, 2021, through September 30, 2022. Exhibit A, pp 32-35.
10. The Respondent received food assistance benefits from the state of North Carolina from August 1, 2021, through January 1, 2023. Exhibit A, pp 47-49.
11. The Department's OIG filed a hearing request on September 21, 2023, to establish that Respondent committed an Intentional Program Violation (IPV). Exhibit A, p 2.
12. On September 21, 2023, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$■■■■ overpayment. Exhibit A, pp 61-63.
13. On September 21, 2023, the Department sent Respondent a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-6.
14. This was Respondent's first established IPV.
15. 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.

An individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple SNAP benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years. 7 CFR 273.16(b)(5).

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 October ■ 2021, Respondent acknowledged the duties of receiving Michigan FAP benefits and reported that she and her son were living in Michigan. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. On October ■ 2021, the Department notified Respondent that she was eligible for Michigan FAP benefits as a household of two.

Respondent failed to report that she had applied for food assistance from the state of North Carolina on August ■ 2022, and that she received North Carolina food assistance for herself and her son from August 1, 2021, through January 1, 2023.

Respondent began receiving Michigan FAP benefits in October of 2021. Respondent began using her Michigan FAP benefits to make purchases in North Carolina on October ■ 2021, and used her Michigan FAP benefits exclusively in North Carolina through October 20, 2022.

Respondent was not eligible for any Michigan FAP benefits while concurrently receiving food assistance from another state. Respondent received FAP benefits totaling \$■ from October 1, 2021, through September 30, 2022. Therefore, Respondent received a \$■ 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 benefits on an application for assistance dated October █ 2021. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. On October █ 2021, the Department notified Respondent that she was eligible for Michigan FAP benefits as a household of two.

The hearing record does not support a finding that Respondent was not living in Michigan on October █ 2021, but Respondent failed to report that she had been a recipient of North Carolina food assistance since August █ 2021. Shortly after becoming eligible for Michigan FAP benefits, Respondent travelled to North Carolina where she used her Michigan FAP benefits to make purchases exclusively in North Carolina. Respondent was not eligible to receive any Michigan FAP benefits while concurrently receiving North Carolina and she received Michigan FAP benefits that she was not eligible for as a result of her failure to truthfully report her circumstances.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that the Respondent intentionally failed to report that she had applied for and was receiving North Carolina food assistance concurrently with her Michigan FAP benefits for the purpose of becoming eligible for Michigan 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 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).

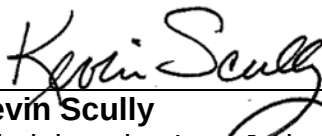
A twelve-month disqualification from the Food Assistance Program (FAP) is appropriate in this case because although Respondent did receive concurrent food assistance, she did not make a fraudulent statement or representation with respect to identity or place of residence. 7 CFR 273.16(b)(5). Respondent intentionally failed to report to the Department that she was an ongoing recipient of North Carolina food assistance resulting in an overissuance of Michigan benefits, but truthfully reported that she was "living in" Michigan on October 8, 2021.

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. 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
Marci Walker
Clinton County DHHS
MDHHS-Clinton-
Hearings@michigan.gov

StebbinsN

Policy-Recoupment

BSC2HearingDecisions

MOAHR

Via-First Class Mail :

Respondent

[REDACTED]
[REDACTED]
[REDACTED]