



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]

Date Mailed: April 29, 2024
MOAHR Docket No.: 23-006063
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 17, 2024, from Lansing, Michigan. The Department was represented by Meghan Kerr, 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 April [REDACTED] 2022, Respondent acknowledged the duties and responsibilities of receiving Food Assistance Program (FAP) benefits. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 10-15.

2. Respondent acknowledged under penalties of perjury that his April [REDACTED] 2022, was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Exhibit A, p 15.
3. Department records indicate that during an eligibility interview conducted on April [REDACTED] 2022, Respondent reported to the Department that he was homeless but using a Michigan address as a mailing address. Exhibit A, p 16.
4. On April [REDACTED] 2022, the Department notified Respondent that he was eligible for Food Assistance Program (FAP) benefits as a household of one not receiving any income. Exhibit A, pp 23-30.
5. Respondent starting using his Michigan Food Assistance Program (FAP) benefits in Indiana on June 7, 2022, and used them exclusively in Indiana through October 18, 2022. Exhibit A, pp 37-39.
6. Respondent was employed from April 26, 2022, through May 26, 2022, and he reported a Michigan address to his employer. Exhibit A, p 43.
7. Respondent failed to report that he started other employment on August 22, 2022, and received earned income from September 2, 2022, through October 21, 2022, while reporting an Indiana address to his employer. Exhibit A, pp 40-42.
8. Respondent received Food Assistance Program (FAP) benefits totaling \$[REDACTED] from October 1, 2022, through November 30, 2022. Exhibit A, p 46.
9. The Department's OIG filed a hearing request on September 26, 2023, to establish that Respondent committed an Intentional Program Violation (IPV). Exhibit A, p 3.
10. On September [REDACTED] 2023, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$[REDACTED] overpayment. Exhibit A, pp 50-51.
11. On September [REDACTED] 2023, the Department sent Respondent a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-7.
12. 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.

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.

To be eligible for FAP benefits, a person must be a Michigan resident. A person is considered a resident under the FAP while living in Michigan for any purpose other than

a vacation, even if there is no intent to remain in the state permanently or indefinitely. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (January 1, 2023), pp 1-2. The Department is prohibited from imposing any durational residency requirements on the eligibility for FAP benefits. 7 CFR 273.3(a).

State agencies must adopt uniform standards to facilitate interoperability and portability nationwide. The term “interoperability” means the EBT system must enable benefits issued in the form of an EBT card to be redeemed in any state. 7 CFR 274.8(b)(10).

On an application for assistance dated April ■ 2022, Respondent acknowledged the duties and responsibilities of receiving FAP benefits. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. On April ■ 2022, Respondent reported to the Department that he was homeless but was “living in” Michigan and using a Michigan mailing address. On April ■ 2022, the Department notified Respondent that he was eligible for FAP benefits as a household of one not receiving any income.

Respondent began using his Michigan FAP benefits in Indiana on June 7, 2022, and he used them exclusively in Indiana through October 18, 2022. While in Indiana, Respondent started employment on August 22, 2022, and received earned income from September 2, 2022, through October 21, 2022. Respondent failed to report this earned income to the Department in a timely manner and reported an Indiana address to his employer.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (March 1, 2024), 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.

If Respondent had reported his first paycheck in Indiana in a timely manner, then the Department would have redetermined his eligibility for ongoing FAP benefits based on that income by the first benefit period after October 4, 2022. An overissuance based on unreported income would not have started until November 1, 2022.

Further, Respondent’s employment ended on October 21, 2022, and no evidence was presented on the record that Respondent received any income in November of 2022. Respondent received FAP benefits totaling \$■ in November of 2022, but the hearing record does not support a finding that he was ineligible for those benefits based on his income. Reducing the alleged overissuance by \$■ would mean that the alleged debt does not exceed the \$500 threshold to establish an IPV as defined in BAM 720.

However, the Department does not allege an IPV based on unreported income but on a failure to report a change of residency. Respondent was under no duty to report a temporary absence from Michigan or to maintain a fixed residence in Michigan to remain eligible for FAP benefits. No evidence was presented on the record that Respondent's purpose of being in Indiana was not to obtain temporary employment. The hearing record supports a finding that Respondent was employed for 2 months in Indiana. The Department is prohibited from establishing a time limit before being considered to be "living in" Michigan for the purposes of becoming eligible for Michigan FAP benefits. The Department is therefore also prohibited from placing a time limit on how longer a person can be temporarily absent from Michigan. 7 CFR 273.3(a).

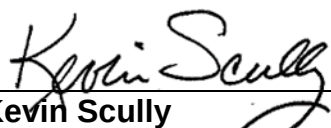
The Department **has not** established an Intentional Program Violation (IPV) based on residency or unreported income.

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 not** established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV).
2. The Department is **ORDERED** to delete the overissuance and cease any recoupment action.

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

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Julie Claffey
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Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

Respondent

[REDACTED]
[REDACTED]
[REDACTED]