



GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: June 5, 2024
MOAHR Docket No.: 23-006371
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 May 7, 2024, from Lansing, Michigan. The Department was represented by Thomas Lilienthal, Regulation Agent of the Office of Inspector General (OIG). Respondent represented herself.

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 June [REDACTED] 2022, Respondent acknowledged her duties and responsibilities including the duty to report all household 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 10-16.
2. Respondent acknowledged under penalties of perjury that her June [REDACTED] 2022, 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 June ■ 2022, application for assistance that no one in her household of two people were employed. Exhibit A, p 14.
4. Department records indicate that Respondent was interviewed on June ■ 2022, and she reported that her son lives in her household 2-3 nights a week. Exhibit A, p 17.
5. On June ■ 2022, Respondent reported that her employment had recently ended on June ■ 2022, and that the only source of income for her household is child support for her daughter. Exhibit A, p 21.
6. On June ■ 2022, the Department notified Respondent that she was eligible for Food Assistance Program (FAP) benefits as a household of three receiving unearned income in the gross monthly amount of \$■ and no earned income from employment. The Department also instructed Respondent to report if her gross monthly household income exceeded \$2,379. Exhibit A, pp 25-30.
7. Respondent's son started employment on October ■ 2022, and received earned income from that employment from November 4, 2022, through March 10, 2023. Exhibit A, pp 39-41.
8. Respondent's son started other employment on March 13, 2023, and received earned income from the employment from March 23, 2023, through September 21, 2023. Exhibit A, pp 42-43.
9. Respondent received Food Assistance Program (FAP) benefits totaling \$■ from January 1, 2023, through March 31, 2023. Exhibit A, p 44.
10. The Department's OIG filed a hearing request on October ■ 2023, to establish that Respondent committed an Intentional Program Violation (IPV). Exhibit A, p 3.
11. On October ■ 2023, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a ■ overpayment. Exhibit A, pp 58-60.
12. On October ■ 2023, the Department sent Respondent a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-7.
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.

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 changes of household income. 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.

On an application for assistance dated June [REDACTED] 2022, Respondent acknowledged the duty to report all household income in a timely manner. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. On June [REDACTED] 2022, the Department notified Respondent that she was eligible for FAP benefits as a household of two and that she did not need to report changes to her circumstances as a simplified reporter unless her gross monthly household income exceeded \$2,379.

The hearing record supports a finding that Respondent's actual gross monthly household income was \$[REDACTED] in November of 2022, and \$[REDACTED] in December of 2022. Respondent's household income continued to exceed the simplified reporter limit through March 31, 2023. Based on the actual gross monthly income of her household, Respondent was not eligible for the \$[REDACTED] of FAP benefits that she received from January 1, 2023, through March 31, 2023.

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 hearing record supports a finding that Respondent was ineligible for FAP benefits from January 1, 2023, through March 31, 2023, based on her actual gross monthly household income. The Department alleges that Respondent intentionally withheld reporting all of her household income for the purposes of maintaining her eligibility for FAP benefits.

The hearing record supports a finding that prior to the period of overissuance, Respondent's son was employed at other short term jobs and that Respondent was providing the Department with verification of that countable income received by a household member under age 22. The hearing record supports a finding that the Department struggled to determine a prospective income from inconsistent paychecks.

Respondent submitted paycheck stubs as evidence that she had reported her son's income in a timely manner, but the hearing exhibits do not establish whether these paycheck stubs were received by the Department during the Department's investigation, or when the employment started. The paycheck stubs are date stamped May ■ 2024.

The Department's proposed exhibits include records of earned income received by Respondent's son. The Department used electronic income records supplied by The Work Number as evidence of unreported income and not the paycheck stubs included in Respondent's proposed exhibits, but this also does not clearly establish whether the income was reported in a timely manner.

Respondent credibly testified that she reported her son's earned income from employment to the Department in a timely manner. The hearing record supports a finding that Respondent reported her both her son's income and her own income previously, and that both household members were employed at several companies for months at a time.

This Administrative Law Judge finds that Respondent was a simplified reporter, and that her failure to report when her actual gross monthly household income exceeded the simplified reporter limit was due to inadvertent household error. The hearing record does not establish by clear and convincing evidence that Respondent intended to conceal her household income from the Department.

The Department's representative credibly testified that Respondent was notified that the Department would recoup a \$■■■■ overissuance of FAP benefits on September ■ 2023. No evidence was presented on the record that Respondent filed a timely hearing request protesting the collection of that debt. Therefore, the Michigan Office of Administrative Hearings and Rules (MOAHR) has no jurisdiction over that Department action.

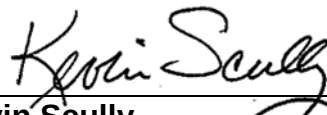
The Department has not established an Intentional Program Violation (IPV).

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:

The Department has not established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV).

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
Shanna Ward
Osceola-Mecosta County DHHS
**MDHHS-Mecosta-Osceola-
Hearings@michigan.gov**

Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

Respondent

[REDACTED]
[REDACTED]
[REDACTED]