



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 4, 2024
MOAHR Docket No.: 23-006405
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 Gina Starzec, 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 August [REDACTED] 2021, Respondent acknowledged her duties and responsibilities including the duty to report persons in the home and 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. On September █ 2021, the Department notified Respondent that she was eligible for Food Assistance Program (FAP) benefits as a household of five receiving no earned income from employment and unearned income in the gross monthly amount of \$█ Exhibit A, pp 17-24.
3. Department records indicate that during a redetermination interview conducted on July █ 2022, Respondent reported that she was living with five children and that she was not employed. Exhibit A, pp 30-36.
4. Department records indicate that during a redetermination interview conducted on July █ 2022, Respondent reported that she was responsible for rent in the monthly amount of \$█ and heat and electric in the monthly amount of \$█ Exhibit A, p 36.
5. Department records indicate that Respondent reported to the Department on July █ 2022, that █ is the parent of two of her children and that he was not living in her home. Exhibit A, p 31.
6. On an application for assistance dated July █ 2022, Respondent acknowledged her duties and responsibilities including the duty to report persons in the home and 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 37-44.
7. Respondent reported that her home address was █ █ █ Exhibit A, p 37.
8. Respondent reported on her July █ 2022, application for assistance that no one in her household of six people were employed. Exhibit A, pp 37-42.
9. On an application for assistance dated August █ 2022, Respondent acknowledged her duties and responsibilities including the duty to report persons in the home and 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 45-52.
10. Respondent reported on her August █ 2022, application for assistance that no one in her household of six people were employed. Exhibit A, pp 45-49.
11. █ started employment on April █ 2022, and he received earned income from that employment from April 15, 2022, through September 9, 2022, and he reported that his home address was █. Exhibit A, pp 25-27.
12. Mr. █ reported to the Michigan Department of State that he was living at █ on April █ 2022. Exhibit A, p 28.

13. Department records indicate that on August ■ 2022, Respondent reported to the Department that Mr. ■ was living in her home but that he was not employed. Exhibit A, p 55.
14. Respondent received Food Assistance Program (FAP) benefits totaling \$■ from June 1, 2022, through August 31, 2022. Exhibit A, pp 56-58.
15. The Department's OIG filed a hearing request on October ■ 2023, to establish that Respondent committed an Intentional Program Violation (IPV). Exhibit A, p 2.
16. On October ■ 2023, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$■ overpayment. Exhibit A, pp 80-81.
17. On October ■ 2023, the Department sent Respondent a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-7.
18. 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.

FAP group composition is established by determining who lives together, the relationship of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the persons reside in an eligible living situation. Parents and their children must be included in the same FAP group. Department of Human Services Bridges Eligibility Manual (BEM) 212 (March 1, 2024), p 1.

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 pended 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 August ■ 2021, Respondent acknowledged the duty to report persons living in her home and all household income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

On July ■ 2022, Respondent reported to the Department that she was living with five children and that no one in the household was employed. Department records indicate that Respondent reported that the father of two of her children was not living in her home. On an application for assistance dated July ■ 2022, Respondent reported that she was

living at [REDACTED] [REDACTED] [REDACTED] as a household of six not receiving any income from employment.

Respondent failed to report that Mr. [REDACTED] the father of two of her children, was living in her home. Mr. [REDACTED] had reported to his employer and the Department of State that his home address was [REDACTED] [REDACTED] [REDACTED]. Mr. [REDACTED] received earned income from employment from April 15, 2022, through September 9, 2022.

As a parent of a child living in Respondent's home, Mr. [REDACTED] was a mandatory group member, and his income was countable towards the household's eligibility for FAP benefits.

However, if Respondent had reported Mr. [REDACTED] income in a timely manner, his income would not have caused the household to be ineligible for any FAP benefits based on the unreported income. The Department determined that Respondent's monthly income in June of 2022 was \$[REDACTED] including Mr. Larkin's earned income from employment. The monthly net income for a household of six was \$[REDACTED] in June of 2022, and \$[REDACTED] for a household of seven people including Mr. [REDACTED]. Department of Health and Human Services Reference Table Manual (RFT) 250 (October 1, 2021), p 1.

Effective June 6, 2022, the Department was directed by ESA Memo 2022-25, that active FAP groups who are not currently receiving the maximum benefit amount for their group size will receive a supplement to bring their benefit amount up to the maximum amount allowed for their group size.

In June of 2022, Respondent was an active FAP recipient. Although there is evidence that Respondent withheld reporting countable income, the hearing record does not support a finding that she would have received any less FAP benefits if she had reported this earned income received by a mandatory household member.

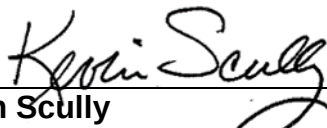
The Department has not established an Intentional Program Violation (IPV).

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:

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**

DHHS
Trista Waishkey
Washtenaw County DHHS
**MDHHS-Washtenaw-
Hearings@michigan.gov**

Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

Respondent

[REDACTED]
[REDACTED]
[REDACTED]