



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: January 21, 2020
MOAHR Docket No.: 19-009410
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION TO ESTABLISH
INTENTIONAL PROGRAM VIOLATION**

Upon the request for a hearing by the Michigan Department of Health and Human Services (MDHHS), 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, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on January 6, 2020, from Detroit, Michigan. MDHHS was represented by Craig Curtiss, regulation agent, with the Office of Inspector General. Respondent appeared and testified. [REDACTED], Respondent's father, testified on behalf of Respondent.

ISSUE

The issue is whether MDHHS established by clear and convincing evidence that Respondent committed an intentional program violation (IPV) which justifies imposing a disqualification.

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 [REDACTED], 2016, Respondent electronically submitted to MDHHS an application requesting Food Assistance Program (FAP) benefits. Boilerplate application language stated that clients are to report income changes to MDHHS within 10 days. Exhibit A, pp. 12-32.
2. On [REDACTED], 2017, Respondent electronically submitted to MDHHS an application requesting Family Independence Program (FIP) benefits. Boilerplate

application language stated that clients are to report income changes to MDHHS within 10 days. Exhibit A, pp. 33-58.

3. On January 18, 2017, MDHHS mailed Respondent a Notice of Case Action stating that Respondent was approved for FIP benefits beginning February 2017. The notice included boilerplate language that clients are to report changes in income to MDHHS within 10 days. Exhibit A, pp. 59-62.
4. From January 30, 2017, through April 14, 2017, Respondent received short-term disability payments through her employment with [REDACTED] (hereinafter, "Employer"). Exhibit A, pp. 65-67.
5. From May 30, 2017, through at least July 28, 2017, Respondent received employment income from Employer. Exhibit A, pp. 65-67.
6. From March 2017 through July 2017, Respondent received \$357 per month in FAP benefits.
7. From April through July 2017, Respondent received \$403 per month in FIP benefits.
8. On June 14, 2018, MDHHS calculated that Respondent received an overissuance (OI) of \$1,417 in FAP benefits from March 2017 through July 2017. The OI factored that Respondent failed to timely report short-term disability and employment income from Employer. MDHHS also factored that Respondent's actual issuances from the OI period totaled \$1,785 and that Respondent's "correct" issuances totaled \$368.
9. On June 14, 2018, MDHHS calculated that Respondent received an overissuance (OI) of \$1,612 in FIP benefits from April 2017 through July 2017. MDHHS factored that Respondent's actual issuances from the OI period totaled \$1,612 and that Respondent's "correct" issuances totaled \$0.
10. On June 14, 2018, MDHHS established a recipient claim against Respondent for \$1,612 in overissued FIP benefits and \$1,785 in over-issued FAP benefits. Exhibit A, p. 94.
11. On [REDACTED] 2019, MDHHS requested a hearing to establish that Respondent committed an IPV justifying imposing a 1-year disqualification period related to overissued FAP and FIP benefits. Exhibit A, p. 1.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a

and is implemented by the federal regulations contained in 7 CFR 273. MDHHS (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

MDHHS requested a hearing only to establish an IPV disqualification period against Respondent. MDHHS may request hearings to establish an IPV disqualification. BAM 600 (July 2019) p. 5. MDHHS alleged that Respondent's IPV resulted in overissuances of \$1,612 in FIP benefits and \$1,785 in FAP benefits due to Respondent's failure to timely report short-term disability and employment income.

The types of recipient claims are those caused by agency error, unintentional recipient claims, and IPV. 7 CFR 273.18(b). An IPV shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards. 7 CFR 273.16(c).

An IPV requires clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an IPV. 7 CFR 273.16(e)(6). Clear and convincing evidence is strong enough to cause a clear and firm belief that the proposition is true; it is more than proving that the proposition is probably true. M Civ JI 8.01. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. 7 CFR 273.12(a)(2). Changes in income must be reported within 10 days of receiving the first payment reflecting the change. *Id.*

FAP-OI and FIP-OI budgets (Exhibit A, pp. 72-91), documentation of Respondent's short-term disability and employment payments (Exhibit A, pp. 65-67), comments documented by Respondent's specialist (Exhibit A, pp. 68-71), and MDHHS testimony established that Respondent received \$1,417 in over-issued FAP benefits and \$1,612 in over-issued FIP benefits due to untimely reported employment income. For an IPV to be

established, MDHHS must clearly and convincingly establish that Respondent intentionally failed to report income.

A written misreporting of income is compelling evidence of an intent to defraud MDHHS. In the present case, MDHHS did not allege a written misreporting by Respondent; MDHHS only alleged that Respondent failed in her responsibility to report income.

To establish that Respondent was aware of her responsibility, MDHHS presented her applications dated [REDACTED], 2016, and [REDACTED], 2017. Exhibit A, pp. 12-31 and 33-58. Each application included boilerplate language that clients are to report changes in income to MDHHS within 10 days. Additionally, MDHHS presented a Notice of Case Action dated January 18, 2017, which included similar boilerplate language. Exhibit A, pp. 63-64.

Respondent testified that she suffered a stroke during her pregnancy and was off from work from October 2016 to July 2017. Respondent testified when she began receiving short-term disability in February 2017 and returned to work in July 2017, she called MDHHS and left voicemail messages to report her income. Respondent further testified that she had recurrent difficulties in reaching her specialist. MDHHS responded that comments on Respondent's case notably did not document receipt of Respondent's voicemails. Exhibit A, pp. 68-71. The evidence suggests the possibilities that either Respondent did not report her income to MDHHS or that Petitioner did report income, but her specialist did not document Respondent's reporting.

Respondent's testimony concerning her reporting was uncorroborated and unverified. Respondent's testimony was also unrebutted by any first-hand testimony. Given the evidence, Respondent's claim that she reported her income was not necessarily verified, but it was reasonably possible. The possibility of Respondent's claim was sufficient to render an IPV to be not clearly and convincingly established.

Based on the evidence, MDHHS did not clearly and convincingly establish that Respondent intentionally failed to report employment income. Thus, MDHHS failed to establish that Respondent committed an IPV.

Individuals found to have committed an IPV shall be ineligible to receive FAP benefits. 7 CFR 273.16(b). The standard disqualification period is used in all instances except when a court orders a different period. IPV penalties are as follows: one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. *Id.* and BAM 725 (January 2016), p. 16.

Without a finding that Respondent committed an IPV, an IPV disqualification cannot follow. Thus, MDHHS is denied its request to establish a one-year disqualification against Respondent.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish that Respondent committed an IPV justifying a 1-year period of disqualification. The MDHHS request to establish an IPV disqualification against Respondent is **DENIED**.

CG/cg



Christian Gardocki

Administrative Law Judge

for Robert Gordon, Director

Department of Health and Human Services

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 Email:

MDHHS-Muskegon-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

