



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: March 25, 2020  
MOAHR Docket No.: 19-013546  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Christian Gardocki**

**HEARING DECISION FOR  
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 scheduled for March 9, 2020, from Detroit, Michigan. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled hearing time. MDHHS was represented by Amber Johnson, regulation agent, with the Office of Inspector General. Respondent did not appear for the hearing.

**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 February 23, 2016, Respondent submitted to MDHHS a Redetermination concerning continuation of Food Assistance Program (FAP) benefits. Respondent accurately reported having no employment income for her household.

2. On March 3, 2016, MDHHS mailed Respondent a notice of FAP benefit approval with a period beginning April 2016. Boilerplate language stated that clients are to report changes in income to MDHHS within 10 days.
3. From August 15, 2016, through August 28, 2017, Respondent received employment income from Champion Foods (hereinafter, "Employer"). Exhibit A, pp. 54-56.
4. On [REDACTED], 2017, Respondent submitted an application requesting FAP benefits. Respondent accurately reported income from Employer. Exhibit A, pp. 23-49.
5. From October 2016 through June 2017, Respondent received a total of \$5,427 in FAP benefits. Respondent's FAP eligibility did not factor income from Employer. Exhibit A, p. 57-59.
6. On July 26, 2018, MDHHS calculated that Respondent received an overissuance (OI) of \$5,169 in FAP benefits from October 2016 through June 2017. The OI factored that Respondent failed to timely report income from Employer. MDHHS calculated that Respondent's actual issuances from the OI period totaled \$5,427, and that Respondent's correct issuances totaled \$258. The OI for June 2017 was \$367. Exhibit A, pp. 60-78.
7. On an unspecified date, Respondent's FAP benefits of \$367 issued in June 2017 were expunged due to non-use.
8. On an unspecified date, MDHHS established a recipient claim against Respondent for \$4,802 in overissued FAP benefits from October 2016 through May 2017 (hereinafter, "OI period").
9. On December 3, 2019, MDHHS requested a hearing to establish that Respondent committed an IPV justifying imposing a 1-year disqualification period related to over-issued FAP benefits from October 2016 through May 2017.

### **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).

MDHHS requested a hearing only to establish an IPV disqualification period against Respondent. Exhibit A, p. 1. MDHHS may request hearings to establish an IPV disqualification. BAM 600 (July 2019) p. 5. An unsigned Intentional Program Violation Repayment Agreement alleged that Respondent received \$4,802 in overissued FAP benefits from October 2016 through May 2017 due to purposely not reporting employment income. Exhibit A, pp. 79-80.

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).

Certified change reporters must report changes in circumstance that potentially affect eligibility or benefit amount. 7 CFR 273.12(a)(2). Changes in income, such as starting employment, must be reported within 10 days of receiving the first payment reflecting the change. *Id.* A change reporter, unlike a simplified reporter, is a household without reported countable employment income.<sup>1</sup> BAM 200 (January 2017) p. 1.

Respondent submitted a Redetermination form to MDHHS on February 23, 2016, in which she accurately reported having no employment income. Exhibit A, pp. 10-16. No evidence suggested that any of her benefit group members reported employment income to MDHHS before or during the OI period. Given the evidence, Respondent was a change reporter, and therefore, required to report to MDHHS the beginning of employment income.

MDHHS presented documentation from [theworknumber.com](http://theworknumber.com) listing Respondent's income history with Employer. Exhibit A, pp. 54-56. Respondent's biweekly income from August 15, 2016, through August 27, 2017, was listed.

MDHHS presented FAP-OI budgets from October 2016 through June 2017 demonstrating how an OI was calculated. Exhibit A, pp. 60-78. The FAP-OI budgets factored Respondent's actual FAP issuances from the OI period. Exhibit A, pp. 57-59. The budgets also factored Respondent's actual pays from Employer. MDHHS budgeted

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<sup>1</sup> Simplified reporters need only report to MDHHS when their household income exceeds the simplified reporting income limit. BAM 200 (January 2017) p. 1. Any other changes need not be reported.

Respondent's income from Employer as unreported, thereby depriving Respondent of a 20% budget credit for timely reporting income. Using the procedures set forth in BEM 556, an OI of \$5,169 was calculated. MDHHS later reduced the OI to \$4,802 after realizing that Respondent's FAP benefits from June 2017 were expunged. Exhibit A, p. 59.

The evidence established a \$4,802 overissuance of FAP benefits to Respondent due to unreported income from Employer. For an IPV to be established, MDHHS must clearly and convincingly establish that Respondent intentionally failed to report employment income.

Generally, an intent to defraud is more likely if MDHHS discovers unreported income on its own, as opposed to a client's reporting of income. In the present case, MDHHS learned of Respondent's income from reporting on an application dated August 9, 2017. Exhibit A, pp. 23-49. The evidence established that Respondent reported her employment income to MDHHS, albeit in an untimely manner.

MDHHS alleged that Respondent should have known of the responsibility to timely report employment income. MDHHS mailed Respondent a notice on March 3, 2016, approving her for continued FAP benefits. Exhibit A, pp. 17-20. On the last page of the notice, MDHHS included boilerplate concerning how clients can review their case online, school meals, the WIC program, domestic violence resources, and benefit card information; also included was a paragraph informing clients of the responsibility to report changes in income to MDHHS within 10 days of the income starting. Boilerplate language buried within an approval notice does not verify that the client read those responsibilities. Further, it also does not establish that a client understood, retained, and/or purposely ignored the boilerplate language in order to receive overissued benefits.

A written misreporting of misinformation is highly persuasive evidence of an intent consistent with an IPV. MDHHS did not present evidence of a written misreporting by Respondent.

Given the evidence, Respondent might have purposely ignored the responsibility to report starting income, but this was not clearly and convincingly established. 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 1-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



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**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-Wayne-49-Hearings  
OIG Hearings  
Recoupment  
MOAHR

**Respondent – Via First-Class Mail:**

