



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: February 28, 2020
MOAHR Docket No.: 20-000162
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 held on February 24, 2020, from Detroit, Michigan. MDHHS was represented by Monica Tardif, regulation agent, with the Office of Inspector General. Respondent testified and was unrepresented. [REDACTED], Respondent's spouse (hereinafter, "Spouse") 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 January 24, 2018., Respondent submitted to MDHHS an application requesting Food Assistance Program (FAP) benefits. Respondent's household included Spouse. Respondent accurately reported that neither she nor Spouse had employment income. Exhibit A, pp. 7-53.

2. From April 13, 2018, through November 21, 2018, Spouse received employment income from [REDACTED] (hereinafter, "Employer").
3. From June 2018 through November 2018, Respondent received a total of \$3,026 in FAP benefits for a benefit group which included Spouse. Respondent's FAP eligibility did not factor income from Employer. Exhibit A, p. 57.
4. On January 14, 2019, MDHHS calculated that Respondent received an overissuance (OI) of \$2,800 in FAP benefits from June 2018 through November 2018. The OI factored that Respondent failed to timely report income from Employer. MDHHS calculated that Respondent's actual issuances from the OI period totaled \$3,026, and that Respondent's correct issuances totaled \$226.
5. On an unspecified date, MDHHS established a recipient claim against Respondent for \$2,800 in overissued FAP benefits from June 2018 through November 2018 (hereinafter, "OI period").
6. On [REDACTED], 2020, 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 June 2018 through November 2018.

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 \$2,800 in overissued FAP benefits from June 2018 through November 2018 due to purposely not reporting employment income. Exhibit A, pp. 72-73.

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 countable employment income.¹ BAM 200 (January 2017) p. 1.

Respondent applied for FAP benefits on September 11, 2017 and reported no employment income for any of the three household members. Exhibit A, pp. 7-53. No evidence suggested that any of her family 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 the beginning of employment income for each benefit group member, including Spouse.

MDHHS presented documentation of Spouse's income history with Employer. Exhibit A, pp. 53-56. MDHHS obtained the records following a request dated December 13, 2018. The records listed income to Spouse from April 13, 2018, through November 21, 2018.

MDHHS presented FAP-OI budgets from June 2018 through November 2018 demonstrating how an OI was calculated. The FAP-OI budgets factored Respondent's actual issuances from the OI period. Exhibit A, p. 57. The budgets also factored Spouse's actual pays from Employer. MDHHS budgeted Spouse's income as unreported, thereby depriving Petitioner of a 20% budget credit for timely reporting income. Using the procedures set forth in BEM 556, an OI of \$2,800 was calculated.

Given the evidence, MDHHS established a \$2,800 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 could not state how Spouse's income was discovered.

¹ 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.

MDHHS alleged that Respondent should have known of the responsibility to report employment income based on her application for FAP benefits. Respondent's application included boilerplate language stating that clients are responsible for reporting employment income to MDHHS within 10 days. Exhibit A, p. 35. Additionally, Respondent's application states that the client's signature is certification of an understanding that rights and responsibilities are understood. Exhibit A, p. 34.

Respondent and Spouse testified to unawareness of a responsibility to report the start of income. Spouse additionally testified that he and Respondent had not previously received FAP benefits.

Boilerplate language of a client's reporting responsibilities does not verify that the client read those responsibilities. Further, it also does not establish that the applicant 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



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-Lenawee-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

