



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: December 18, 2020
MOAHR Docket No.: 20-001390
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

The Michigan Department of Health and Human Services (MDHHS or the Department) requested a hearing alleging that Respondent [REDACTED] committed an intentional program violation (IPV). Pursuant to MDHHS' request and in accordance with MCL 400.9, 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and Mich Admin Code, R 400.3130 and R 400.3178, this matter is before the undersigned Administrative Law Judge. After due notice, a hearing was held via telephone conference on November 23, 2020. Stephanie Picca, Regulation Agent of the Office of Inspector General (OIG), represented the Department. Respondent did not appear at the hearing, and it was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4); Mich Admin Code, R 400.3130(5); or Mich Admin Code, R 400.3178(5).

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
2. Should Respondent be disqualified from receiving FAP benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Respondent was a recipient of FAP benefits issued by the Department. From October 1, 2017 to February 28, 2018 (FAP fraud period), Respondent was issued \$1,529 in FAP benefits by the State of Michigan and the Department alleges that Respondent was entitled to \$31 in such benefits during this time period, resulting in a FAP OI of \$1,498.(Exhibit A, pp. 3-4;91-93)

2. On [REDACTED], 2017, Respondent signed and submitted an assistance application to receive benefits from the Department. In signing the application, Respondent acknowledged being aware of the responsibility to accurately report his circumstances and to report changes in his circumstances to the Department, including changes in employment and income. Respondent reported that he did not have any earned income or employment on the application. (Exhibit A, pp. 10-23)
 - a. During an application interview conducted on [REDACTED], 2017, Respondent reported to the Department that he had no earned income. (Exhibit A, pp. 24-25)
3. On [REDACTED], 2017, Respondent signed and submitted an assistance application to receive benefits from the Department. In signing the application, Respondent acknowledged being aware of the responsibility to accurately report his circumstances and to report changes in his circumstances to the Department, including changes in employment and income. Respondent reported that he did not have any earned income or employment on the application. (Exhibit A, pp. 26-49)
 - a. During an application interview conducted on [REDACTED], 2017, Respondent reported that he did not have any earned income and that his only source of income was Supplemental Security Income (SSI). (Exhibit A, pp. 50-51)
4. On October 17, 2017, the Department sent Respondent a Notice of Case Action advising him of the household's approval for FAP benefits. The Notice of Case Action again advises him of the responsibility to report changes in his circumstances, including changes in employment and income and that his FAP benefits were determined based on \$0 in reported earned income. (Exhibit A, pp. 52-57)
5. On [REDACTED], 2017, the Department received a redetermination completed by Respondent on which he reported that he has no income. (Exhibit A, pp. 58-65)
6. On [REDACTED], 2017, Respondent signed and submitted an assistance application to receive benefits from the Department. Respondent reported that he did not have any earned income or employment on the application. Respondent again reported that he had no income with the exception of SSI and Family Independence Program (FIP) benefits during an interview conducted on [REDACTED], 2017. (Exhibit A, pp. 66-87)
7. Although the evidence suggested that Respondent was receiving SSI benefits, the Department asserted that it had no reason to believe that Respondent had a physical or mental impairment that would limit his understanding or ability to fulfill his reporting requirements.

8. The Department obtained verification of Respondent's employment and earnings through the Work Number showing that he gained employment with [REDACTED] on May 27, 2017, received his first paycheck on June 9, 2017, and continued to be employed and earning income through April 2018. (Exhibit A, pp. 88-90)
9. The Department's OIG filed a hearing request on or around January 29, 2020 alleging that Respondent intentionally failed to report his earned income, and as a result received FAP benefits that he was ineligible to receive, causing a FAP OI of \$1,498.
10. This was Respondent's first alleged IPV and the Department requested that Respondent be disqualified from receiving FAP benefits for 12 months.
11. The Department has established a client error FAP OI claim in the amount of \$1,498 and is not seeking a decision on recoupment of the FAP OI.
12. A Notice of Hearing was mailed to Respondent at his last known address and was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

MDHHS policies are contained in the MDHHS Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 7 USC 2036a. It is implemented by the federal regulations contained in 7 CFR 273. MDHHS administers FAP pursuant to MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq.*, and Mich Admin Code, R 400.3001 to R 400.3031.

As a preliminary matter, although the Department presented evidence in Exhibit A in support of a FAP OI in the amount of \$1,498, the Department testified that a client error caused OI had previously been established in this matter. Thus, because a client error OI has already been established in this matter, a decision will not be issued on the OI of \$1,498 for the FAP fraud period. The Department proceeded with its hearing request regarding the alleged IPV and FAP disqualification.

Intentional Program Violation

Effective October 1, 2014, MDHHS's OIG requests IPV hearings for cases where (1) the total repayment amount sought from Respondent for all programs combined is \$500 or more or (2) the total repayment amount sought from Respondent for all programs combined is less than \$500 but the group has a previous IPV, the matter involves concurrent receipt of assistance, the IPV involves FAP trafficking, or the alleged fraud is

committed by a state government employee. BAM 720 (October 2017), p. 5, 12-13. An IPV occurs when a recipient of Department benefits intentionally (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation FAP, FAP federal regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FAP benefits or electronic benefit transfer (EBT) cards. 7 CFR 273.16(c).

To establish an IPV, the Department must present clear and convincing evidence that the household member committed, and intended, to commit the IPV or intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. 7 CFR 273.16(e)(6); BAM 720, p. 1. Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01; *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 114-115; 793 NW2d 533, 541 (2010); see also M Civ JI 8.01. Evidence may be uncontroverted and yet not be clear and convincing; conversely, evidence may be clear and convincing despite the fact that it has been contradicted. *Smith* at 115. The clear and convincing standard is “the most demanding standard applied in civil cases.” *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995).

For an IPV based on inaccurate reporting, Department policy requires that an OI, and all three of the following exist: the client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and the individual was also clearly and correctly instructed regarding his or her reporting responsibilities and the individual have no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 720, p. 1.

In this case, the Department alleges that Respondent committed an IPV because he intentionally failed to report to the Department that he was employed with [REDACTED] and was earning income, causing an overissuance. Clients must completely and truthfully answer all questions on forms and in interviews. Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes such as starting or stopping employment, earning income, and starting or stopping a source of unearned income must be reported within ten days of receiving the first payment reflecting the change. BAM 105 (January 2018), pp. 9-12; 7 CFR 273.12(a)(1); 7 CFR 273.21.

The Department contended that Respondent’s failure to report his employment and earned income on the assistance applications and redetermination submitted caused an OI of FAP benefits in the amount of \$1,498 from October 2017 to February 2018. The Department presented evidence from the Work Number, showing that Respondent was hired at [REDACTED] on May 26, 2017, received his first paycheck on June 9, 2017, and continued to be employed and earning income through the FAP fraud period.

In support of its contention that Respondent committed an IPV, the Department presented assistance applications dated [REDACTED], 2017, [REDACTED], 2017, and

██████████, 2017, as well as a redetermination dated ██████████, 2017, all of which were completed by Respondent and submitted to the Department during the fraud period and the time in which he was employed. In signing and completing the assistance applications and redetermination and upon receiving the October 17, 2017 Notice of Case Action, Respondent was made aware of the responsibility to accurately report his household's circumstances and to report changes in circumstances to the Department, including changes in employment and income.

Upon review, although Respondent reported his unearned income from SSI and the Department had record of his household's receipt of FIP benefits, Respondent failed to disclose his employment and earnings on the assistance applications and redeterminations completed, as well as during the interviews conducted. The Department's evidence showed that despite being advised of his reporting responsibilities with respect to his income and employment, as well as the penalties for failing to do so, Respondent failed to accurately and timely report to the Department that he was employed and earning income. Therefore, because Respondent failed to accurately and timely report his employment and income to the Department within 10 days of his first pay date and continued to fail to disclose his earnings on subsequent applications, the Department's evidence establishes, by clear and convincing evidence that Respondent intentionally withheld information for the purpose of establishing or maintaining benefit eligibility and as such, committed an IPV.

Disqualification

A client who is found to have committed an IPV by a hearing decision is disqualified from receiving program benefits for one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. 7 CFR 273.16(b)(1); BAM 720, p. 16. A disqualified recipient remains a member of an active group as long as he or she lives with them, and other eligible group members may continue to receive benefits. 7 CFR 273.16(b)(11); BAM 720, p. 16. As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV of the FAP. No evidence of any prior FAP IPV was presented. Because this was Respondent's first FAP IPV, he is subject to a one-year disqualification from receipt of FAP benefits.


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** established by clear and convincing evidence that Respondent committed an IPV of the FAP.

It is FURTHER ORDERED that Respondent be disqualified from the FAP for a period of **12 months**.

ZB/jem



Zainab A. Baydoun
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-Calhoun-Hearings
MDHHS-OIG-Hearings
Policy-Recoupment
L. Bengel
MOAHR

Respondent – Via First-Class Mail:

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