



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: October 19, 2020
MOAHR Docket No.: 20-002721
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 October 13, 2020.

Thomas Lilienthal, Regulation Agent of the Office of Inspector General (OIG), represented MDHHS.

Respondent appeared and represented herself.

Department Exhibits A.45 and B.138 were offered and admitted into the record.

ISSUES

1. Did MDHHS establish, by clear and convincing evidence, that Respondent committed an IPV concerning Food Assistance Program (FAP) benefits?
2. Should Respondent be disqualified from receiving benefits for 12 months?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial

evidence on the whole record, finds as material fact:

1. From February 1, 2017 to July 31, 2018, Respondent received \$4,068.00 in FAP benefits for a 3-person household group.
2. Respondent acknowledged her rights and responsibilities pursuant to her acknowledgement on applications for assistance (DHS-1171s) signed on [REDACTED] 2017, [REDACTED], 2017, and [REDACTED], 2018; and on redetermination forms (DHS-1010) signed on March 17, 2017 and March 6, 2018. Respondent was further issued notifications from the Department on Notice of Case Actions (DHS-1605s) upon case opening and review issued on February 8, 2017, February 6, 2018 and March 19, 2018. On all these documents and notices, Respondent acknowledged and/or was notified that she was required to report all income and changes in income in the household within 10 days of any change(s).
3. Respondent does not have an apparent physical or mental impairment that would limit the understanding or ability to accurately report
4. Respondent has no prior FAP IPV disqualifications.
5. On April 23, 2020, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to report earned income received by her spouse, [REDACTED], who was employed and received income with [REDACTED] from February 1, 2017, through July 6, 2018; and that Respondent failed to report her daughter's unearned RSDI income while receiving FAP benefits during the overissuance period, resulting in a FAP benefits overissuance of \$4,068.00 during the alleged fraud period.
6. Respondent has listed the Department as an unsecured creditor on a bankruptcy filing. The Department is requesting a disqualification only.
7. The OIG requests that Respondent be disqualified from receiving FAP benefits for a period of 12 months due to committing an IPV.

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.

Intentional Program Violation

An IPV occurs when a recipient of MDHHS benefits intentionally made a false or misleading statement, or misrepresented, concealed, or withheld facts. 7 CFR 273.16(c)(1). 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.

To establish an IPV, MDHHS must present clear and convincing evidence that the household member committed, and intended to commit, the IPV. 7 CFR 273.16(e)(6); BAM 720, p. 1. Clear and convincing evidence is evidence sufficient to result in "a firm belief or conviction as to the truth of the precise facts in issue." *Smith v Anonymous Joint Enterprise*, 487 Mich 102, 114-115; 793 NW2d 533 (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, MDHHS policy also requires that the individual have been clearly and correctly instructed regarding the reporting responsibilities and have no apparent physical or mental impairment that limits the ability to understanding or fulfill these reporting responsibilities. BAM 720.

In this case, MDHHS evidence shows that Respondent affirmatively misrepresented that her spouse was laid off from work with [REDACTED], effective January 17, 2017, despite her spouse's continuance of earned income paid pursuant to a check received February 15, 2017. Respondent's household income exceeded the Simplified Reported income limit of \$3,530.00 and yet, Respondent not only failed to report additional income, but affirmatively represented that the income had stopped. In addition, Respondent continuously reported her daughter as a member of the FAP household receiving FAP benefits for her while failing to report her daughter's RSDI income. See Exhibits A and B.

At the administrative hearing, Respondent argued both that her daughter was out of the home and was receiving her own RSDI income, and, that her daughter did not receive the income. Respondent further made a third inconsistent statement-that her daughter had to pay back \$3,000.00 in social security benefits. At the same time, Respondent listed her daughter as a member of her group resulting in Respondent receiving FAP benefits on her behalf. All proposed explanations cannot be true at the same time. Under these facts, the evidence rises to the misrepresentation as defined by federal and state law and policy regarding an IPV and thus, these regulations and policy require that a disqualification be applied.

Due to the bankruptcy filing, the Department is not asking for a repayment due to a federal stay of the debt.

IPV Disqualification

An individual who is found pursuant to an IPV disqualification hearing to have committed a FAP IPV is disqualified from receiving benefits for the same program for 12 months for the first IPV, 24 months for the second IPV, and lifetime for the third IPV. 7 CFR 273.16(b)(1); BAM 720. As discussed above, MDHHS has established by clear and convincing evidence that Respondent committed an IPV. Because this was Respondent's first IPV for FAP, Respondent is subject to a 1-year disqualification from receipt of FAP benefits.

Overissuance

When a client group receives more benefits than entitled to receive, MDHHS must attempt to recoup the OI as a recipient claim. 7 CFR 273.18(a)(2); BAM 700. The amount of a \$4,068.00 OI is the benefit amount the client actually received; Respondent was eligible for \$0 FAP benefits. However, the Department is not requesting a finding of a debt by this forum, as such is prohibited by federal law due to the bankruptcy stay.

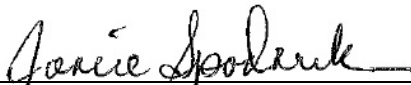
DECISION AND ORDER

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. MDHHS has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent is subject to a 12-month disqualification from FAP.

IT IS ORDERED that Respondent be personally disqualified from the FAP for a period of 12-months.

JS/ml



Janice Spodarek
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

DHHS

Lacey Whitford
Isabella County DHHS – via electronic
mail

Petitioner

OIG – via electronic mail
P.O. Box 30062
Lansing, MI
48909-7562

MDHHS Recoupment – via electronic mail

L. Bengel – via electronic mail

Respondent

[REDACTED] – via first class mail
[REDACTED], MI [REDACTED]