



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], MI [REDACTED]

Date Mailed: October 21, 2020
MOAHR Docket No.: 20-002877
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 20, 2020.

Karrie Felenschak, Regulation Agent of the Office of Inspector General (OIG), represented MDHHS.

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).

Department Exhibit A.123 was 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 July 1, 2016 to June 30, 2018, Respondent was employed and received earned income as a home held caregiver with [REDACTED] and a beneficiary of FAP program.
2. From July 1, 2016 through June 30, 2018, Respondent failed to report earned income with [REDACTED] while collecting a FAP benefits.
3. Respondent was given notice and acknowledged that he understood his reporting responsibilities to report earned income and any changes of income within 10 days, and further acknowledged that he understood that he could be prosecuted for fraud for failing to report income changes and failing to report any income.
4. Respondent acknowledged his reporting responsibilities on multiple occasions, specifically pursuant to an application for assistance (DHS-1171) signed on [REDACTED], 2016, and pursuant to redetermination forms (DHS-1010) signed on August 5, 2019, and May 26, 2017. Respondent further was given information from the Department pursuant to a Notice of Case Action (DHS-1605) issued on August 11, 2016. Respondent failed to report earned income with [REDACTED] in interviews with his caseworker conducted on August 11, 2016, June 1, 2017, and June 4, 2018.
5. From July 1, 2016 through June 30, 2018, Respondent received \$4,475.00 in FAP benefits and was eligible for \$749.00 resulting in an overissuance of \$3,826.00 for a group size of one.
6. Respondent does not have an apparent physical or mental impairment that would limit the understanding or ability to accurately report.
7. Respondent has no prior FAP IPV disqualifications.
8. The Department previously issued notices and gave Respondent his due process rights regarding the debt and is not requesting a ruling on the debt here.
9. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services 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.

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 alleges that Respondent committed an IPV based on Respondent's failure to report earned income on an application for assistance, on two occasions while completing redetermination applications, and during three interviews with his caseworker. In addition, notices issued by the Department informing Respondent of his new benefits repeatedly informed Respondent of his duty to report. In all instances, Respondent affirmatively responded either in writing to verbally to his caseworker that he did not have any income to report.

Credible, clear and convincing evidence supports finding that Respondent committed an IPV.

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. There was no evidence of a prior IPV by Respondent. Because this was Respondent's first IPV for FAP, Respondent is subject to a 12-month 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 FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. 7 CFR 273.18(c)(1); BAM 720, BAM 715, BAM 705.

In this case, MDHHS alleged that Respondent was overissued \$3,826.00 in FAP benefits. However, the DDHHS is not requesting an overissuance or debt ruling due to the Department having previously established the debt and issued due process notices in that regard.

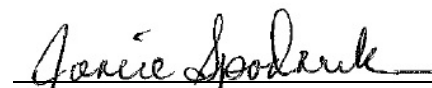
DECISION AND ORDER

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 a FAP IPV.
2. Respondent is subject to a 12-month disqualification from the FAP program.

IT IS ORDERED that Respondent be personally disqualified from 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

Denise McCoggle
Wayne (District 15) County DHHS – via
electronic mail

MDHHS Recoupment – via electronic mail

L. Bengel – via electronic mail

Petitioner

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

Respondent

██████████ – via first class mail
██████████
██████████, MI ██████████