



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.: 20-005226
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

The Michigan Department of Health and Human Services (Department) requested a hearing alleging that Respondent, [REDACTED], committed an Intentional Program Violation (IPV). Pursuant to the Department's 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 December 16, 2020. Valerie Mathis, Regulation Agent of the Office of Inspector General (OIG), represented the Department. Respondent was present and represented herself.

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from receiving Food Assistance Program (FAP) and Family Independence Program (FIP) 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 January 1, 2017 through March 31, 2017, Respondent was a recipient of FAP and FIP benefits.
2. Respondent was aware of the responsibility to report changes in her circumstances to the Department, such as changes in employment and income.
3. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

4. On July 9, 2020, the Department's OIG filed a hearing request alleging that Respondent intentionally withheld her income information, and as a result, received FIP and FAP benefits from January 1, 2017 through March 31, 2017 (fraud period) that Respondent was ineligible to receive. The OIG requested that Respondent be disqualified from receiving FIP and FAP benefits for a period of 12 months due to committing an IPV. The Department has already established a FIP and FAP overissuance in connection with this matter.
5. This was Respondent's first alleged IPV.
6. 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

The Department's policies are contained in the Department's 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. The Department 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.

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. MDHHS administers FIP pursuant to 45 CFR 233 to 45 CFR 261; MCL 400.10; the Social Welfare Act, MCL 400.1 *et seq.*; and Mich Admin Code, R 400.3101 to R 400.3131.

Intentional Program Violation

An IPV occurs when a recipient of Department benefits intentionally made a false or misleading statement, or misrepresented, concealed, or withheld facts. 7 CFR 273.16(c)(1). Effective October 1, 2014, the Department'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), pp. 12-13.

To establish an IPV, the Department 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, Department 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, p. 1.

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p. 1 (emphasis in original); see also 7 CFR 273.16(e)(6). The federal regulations define an IPV as: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Supplemental Nutrition Assistance Program (SNAP), SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing for trafficking of SNAP benefits or Electronic Benefit Transfer (EBT) cards. 7 CFR 273.16(c).

In this case, the Department alleges that Respondent committed an IPV of her FIP and FAP benefits because she failed to notify the Department when she began receiving income. While this evidence may be sufficient to establish that Respondent may have been overissued benefits, to establish an IPV, the Department must present clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of maintaining benefits.

In support of its contention that Respondent committed an IPV, the Department presented an application Respondent submitted to the Department on [REDACTED], 2016. The Department asserts that when completing the application process, Respondent acknowledged that she had received the Information Booklet advising her of the “Things You Must Do,” which explained reporting changes in circumstances, including income.

The Department also provided Respondent’s Unemployment Compensation Benefit (UCB) Consolidated Inquiry report. The report shows that Respondent began receiving UCB income on November 26, 2016 and continued to receive the income throughout the remainder of the fraud period.

Respondent testified that she most likely did not timely report the UCB income to the Department. Respondent stated that during that time period, she lost her employment, was in an abusive relationship and was homeless. Respondent also testified that she had three children, one of which was still an infant. Respondent stated that she did not

intentionally conceal information from the Department and that she merely neglected to report the income information due to her circumstances at the time.

Respondent's testimony that her failure to report the UCB income was an inadvertency, rather than intentional, was credible. Therefore, the Department failed to present clear and convincing evidence that Respondent intentionally withheld information from the Department to receive a benefit for which she was not entitled. As it follows, the Department failed to establish that Respondent committed an IPV.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15; BEM 708 (October 2016), p. 1. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16; 7 CFR 273.16(b). CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.


As discussed above, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV. Thus, Respondent is not subject to a disqualification from her receipt of FIP or FAP benefits on the basis of an IPV.

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 the Department has not established by clear and convincing evidence that Respondent committed an IPV.

It is **ORDERED** that Respondent is not subject to disqualification from FIP or FAP benefits.

EM/jem



Ellen McLemore

Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

