



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 16, 2020
MOAHR Docket No.: 20-004888
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 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. After due notice, a hearing was scheduled for December 9, 2020. The hearing was held on the scheduled hearing date via telephone conference line and at least 30 minutes after the scheduled hearing time. MDHHS was represented by Gary Shuk, regulation agent with the Office of Inspector General. Respondent did not participate in the hearing.

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 period.

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 [REDACTED] 2018, Respondent submitted to MDHHS an application requesting Food Assistance Program (FAP) benefits. Respondent reported no employment income.
2. On September 24, 2018, Respondent was hired by [REDACTED] [REDACTED] (hereinafter, "Employer").

3. On [REDACTED] 2018, Respondent submitted to MDHHS an application requesting Food Assistance Program (FAP) benefits. Respondent reported no employment income and no change in income in the last 30 days.
4. On October 3, 2018, MDHHS mailed Respondent a notice of FAP benefit approval beginning November 2018 based on \$0 employment income. Boilerplate stated that clients are to report changes in income to MDHHS within 10 days.
5. On October 4, 2018, Respondent received income for a 40-hour work week for a pay period from September 23, 2018, through September 30, 2018.
6. From October 4, 2018, through January 2019, Respondent received weekly income from Employer.
7. From December 2018 through January 2019, Respondent received \$606 in FAP benefits based on \$0 employment income.
8. On April 15, 2020, MDHHS calculated that Respondent received an overissuance (OI) of \$591 in FAP benefits from December 2018 through January 2019 due to unreported income from Employer.
9. On an unspecified date, MDHHS established a recipient claim against Respondent for \$591 in overissued FAP benefits from December 2018 through January 2019 due to client error.
10. On July 8, 2020, MDHHS requested a hearing to establish that Respondent committed a FAP-related IPV justifying imposing a 2-year disqualification period stemming from overissued FAP benefits from December 2018 through January 2019.
11. As of the date of hearing, Respondent had one previous IPV disqualification.

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 a FAP-related 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 purposely failed to timely report employment income which resulted in over-issued FAP benefits from December 2018 through January 2019. Exhibit A, pp. 35-36.

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 Supplemental Nutrition Assistance Program (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). An evidentiary standard of clear and convincing is “the most demanding standard applied in civil cases.” *In re Martin*, 450 Mich 204, 226-227; 538 NW2d 399 (1995). Clear and convincing evidence must be 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).

Federal regulations require states mandate that most FAP recipients to report income within 10 days after the income begins.¹ 7 CFR 273.12(a)(2). MDHHS policy properly reflects federal regulations. BAM 105 (January 2015), p. 7.

An IPV based on untimely reported income requires that unreported income caused an OI. Recipient claim amounts not caused by trafficking are calculated by determining the correct amount of benefits for each month there was an OI and subtracting the correct issuance from the actual issuance.² CFR 273.18(c)(1). MDHHS presented a FAP-OI summary from December 2018 through January 2019. Exhibit A, p. 31. Actual FAP issuances to Respondent were taken from documentation listing issuances totaling \$606 during the OI period. Exhibit A, p. 16. Presumably, FAP-OI budgets factored the group size, income, and expenses from original budgets other than adding Respondent's actual gross pays from Employer.³ Documentation from theworknumber.com listed pays to Respondent from October 4, 2018, through January 31, 2019. Exhibit A, pp. 17-18. To further support Respondent's non-reporting of income

¹ Simplified reporters need only report when household income exceeds the simplified reporting income limit. Simplified reporters are those that reported employment income during the ongoing benefits period. Respondent was not a simplified reporter as employment income was not reported or budgeted at the beginning of the OI period.

² Additionally, MDHHS is to subtract any benefits that were expunged (i.e. unused benefits which eventually expire from non-use). There was no evidence that FAP benefits issued to Respondent were expunged.

³ Factoring gross income is compliant with employment income policy (BEM 501) and factoring actual pays is compliant with policy directing how to calculate an overissuance based on client error (BAM 715).

to MDHHS, comments associated with Respondent's case notably had no reporting of income from Employer documented. Exhibit A, pp. 28-30. An OI of \$591 was calculated. Additionally, MDHHS presented documentation listing a claim of \$591 due to client-error was established against Respondent stemming from overissued FAP benefits from December 2018 through January 2019. Exhibit A, p. 32.

The evidence established that Respondent received an OI of \$591 in FAP benefits from December 2018 through January 2019 due to untimely reported employment income. For an IPV, MDHHS must clearly and convincingly establish that Respondent purposely failed to report income to receive an OI of FAP benefits.

MDHHS alleged that Respondent should have been aware of the responsibility to report employment income to MDHHS within 10 days after the income started on October 4, 2018. MDHHS presented Respondent's electronically submitted applications dated [REDACTED], 2018, and [REDACTED], 2018. Exhibit A, pp. 10-15 and 19-23. MDHHS testified that the hardcopy of such electronic applications do not include language about reporting changes; however, MDHHS testified that a client is made aware of reporting responsibilities during the online application process.⁴ MDHHS also presented a notice sent to Respondent on October 3, 2018, which included boilerplate stating that clients are to report changes, such as income, within 10 days. Exhibit A, pp. 24-27.

The evidence established that MDHHS gave Respondent notice of the responsibility to report income to MDHHS within 10 days. Despite the evidence, it cannot be stated that Respondent read, absorbed, or retained the reporting responsibilities; other evidence was more insightful.

Respondent's employment records verified that Respondent was hired by Employer on September 24, 2018 and worked 40 hours for the pay period from September 23, 2018, through September 30, 2018. Exhibit A, pp. 17-18. Given Respondent's hire date and first pay period hours worked, Respondent was fully aware as of September 28, 2018, that he would be receiving income. Respondent's application dated [REDACTED], 2018, reported no employment income and no employment from the last 30 days. A reporting of no employment income on September 28, 2018, and no employment from the last 30 days were misreportings highly consistent with a purposeful intent to not report income to MDHHS.

Based on the evidence, MDHHS clearly and convincingly established that Respondent committed an IPV by failing to timely report income. Accordingly, MDHHS may proceed with disqualifying Respondent from benefit eligibility.

Individuals found to have committed a FAP-related 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:

⁴ A regulation agent testified that he submitted applications electronically during a training and that he personally experienced seeing online reporting responsibilities during the training.

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.

MDHHS presented documentation of Respondent's past IPV's which listed a previous FAP-related IPV sanction beginning January 2010. Exhibit A, p. 34. Thus, the present case establishes Respondent's second IPV and a 2-year IPV disqualification is proper.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established a basis for a 2-year disqualification period against Respondent for FAP benefits overissued from December 2018 through January 2019. The MDHHS request to establish a 2-year FAP-related IPV disqualification against Respondent is **APPROVED**.

CG/tm



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-Saginaw-Hearings
OIG Hearings
LBengel
Policy Recoupment
MOAHR

Respondent – Via First-Class Mail:

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