



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: December 9, 2020
MOAHR Docket No.: 20-004922
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 December 7, 2020.

Christina Herrod, Regulation Agent of the Office of Inspector General (OIG), represented MDHHS.

Respondent appeared and represented herself.

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 FAP?

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] 2016, the Department received Respondent's Application for FAP benefits which Respondent signed, acknowledging her responsibility to report changes in household circumstances to the Department within ten days.

2. On [REDACTED] 2018, the Department received Respondent's completed Redetermination.
3. On September 10, 2018, the Department issued a Notice of Case Action to Respondent informing her that she was eligible for FAP benefits for a group size of four based upon no income and reminded her of the responsibility to report changes in household circumstances to the Department.
4. On January 22, 2019, Respondent began employment with [REDACTED] (Employer).
5. On January 25, 2019, Respondent received her first paycheck from Employer.
6. Respondent continued in her employment through at least July 31, 2019.
7. On July 23, 2019, the Department became aware of Respondent's employment and issued a Wage Match Client Notice to Respondent.
8. On [REDACTED] 2019, the Wage Match Client Notice was returned completed to the Department.
9. On August 22, 2019, the Department established a debt for overissued FAP benefits in the amount of \$1,640.00 for the period March 1, 2019 through July 31, 2019 based upon the same facts as this case.
10. Respondent was aware of the responsibility to report changes in household circumstances to the Department.
11. Respondent testified that she had reported her employment to the Department in person prior to the Wage Match Client Notice but is unsure of the exact date.
12. The Department relies upon the Case Comments which do not reflect a notation from a Department worker that verifications of Respondent's employment were received.
13. Respondent does not have an apparent physical or mental impairment that would limit the understanding or ability to accurately report changes in household circumstances.
14. Respondent has no prior FAP IPV disqualifications.
15. On July 6, 2020, MDHHS' OIG filed a hearing request alleging that Respondent intentionally concealed her employment income and as a result received FAP benefits from March 2019 to July 2019 (fraud period) that Respondent was ineligible to receive. OIG requested that Respondent be disqualified from receiving FAP benefits for a period of 12 months due to committing an IPV.

16. 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 (October 2017), pp. 12-13.

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, p. 1.

In this case, MDHHS alleges that Respondent committed an IPV based on her failure to report her earned income from employment. Earned income received by the client is considered in the calculation of a client's FAP eligibility and amount of benefits. BEM 500 (July 2017); BEM 556 (April 2018), pp. 2-3; 7 CFR 273.9(a). FAP recipients who are not simplified reporters are required to report starting or stopping employment and

changes in circumstance that potentially affect eligibility or benefit amount within ten days of receiving the first payment reflecting the change. BAM 105 (January 2019), p. 11-12; 7 CFR 273.10(b)(1)(i).

Respondent was advised of and acknowledged her responsibility to report changes in household circumstances to the Department within 10 days via her Application for benefits dated [REDACTED] 2016. Respondent was reminded of the responsibility via her Notice of Case Action dated September 10, 2018. The Notice of Case Action also advised her that her FAP benefit rate was calculated based upon \$0.00 household earned income. Respondent positively demonstrated her understanding of the reporting requirement when she reported new employment with [REDACTED] (Employer 2) on December 8, 2016. Respondent continued to earn income from Employer 2 through August 2017. However, the Case Comments relied upon by the Department to assert that Respondent never reported her income with Employer also are void of any information about when her income with Employer 2 ended. In September 2018, the Case Comments reflect some sort of verification for wages, but it is not identified or clarified. The Redetermination and Notice of Case Action from that period reflect no earned income. Given the questions presented and ambiguity of the Case Comments, the Case Comments are not as enlightening or as informative as the Department would suggest in its reliance upon them. It is also notable that there is a period from September 8, 2018 through July 19, 2019 during which the Department did not enter a single comment in Respondent's case. Given Respondent's history of reporting her wages and the ambiguity presented by the Department's case file, the Department has not presented clear and convincing evidence 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, p. 16. As discussed above, MDHHS has not established by clear and convincing evidence that Respondent committed an IPV. Therefore, Respondent is not subject to a period of disqualification from FAP.

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 not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent is not subject to a period of disqualification from FAP.

IT IS ORDERED that Respondent is not subject to a period of disqualification from FAP

AMTM/cc



Amanda M. T. Marler
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-Macomb-36-Hearings
MDHHS-OIG-Hearings
Policy-Recoupment
L. Bengel
MOAHR

Respondent- Via USPS:

