



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 11, 2020
MOAHR Docket No.: 20-005063
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 10, 2020.

Jonetta Greene, 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 July 14, 2014, Respondent married [REDACTED] (Husband).
2. Approximately six months after marriage, Husband moved out.

3. On August 7, 2015, Respondent received her first paycheck from employment with [REDACTED] (Employer).
4. On [REDACTED] 2015, Respondent completed and submitted a Redetermination to the Department which did not list Husband or any earned income; she signed under penalty of perjury that all information was true and complete.
5. On [REDACTED] 2016, Respondent submitted an Application for State Emergency Relief (SER) benefits and again did not list her Husband in the household nor did she list any income.
6. Based upon the information in the Application and Redetermination, the Department issued \$3,213.00 in FAP benefits to Respondent for a group size which varied from October 2015 through May 2016 and also in March 2017.
7. In 2017, Husband returned to Respondent's home.
8. On [REDACTED] 2017, Respondent submitted an affidavit to the Department indicating the following:
 - a. At the time of the statement, Husband was in the home in addition to her granddaughter.
 - b. Respondent was working at Employer.
 - c. Respondent reported her employment to Mrs. Brooks prior to the Affidavit.
 - d. Respondent and Husband were married in 2014, then separated for a period.
 - e. Husband was not employed at the time of the statement.
 - f. Husband had no earned or unearned income at the time of the statement.
9. At some point, based upon the facts in this case, the Department established a debt for overissued FAP benefits totaling \$2,455.00 for the period October 2015 through May 2016 and March 2017.
10. As of March 14, 2020, the Department had recouped or collected all but \$482.92 from Respondent.
11. Respondent was aware of the responsibility to report changes in household circumstances to the Department.

12. Respondent does not have an apparent physical or mental impairment that would limit the understanding or ability to accurately report changes in household circumstances.
13. Respondent has no prior FAP IPV disqualifications.
14. On June 30, 2020, MDHHS' OIG filed a hearing request alleging that Respondent intentionally misrepresented and concealed her group size as well as household income information and as a result received FAP benefits from October 2016 through May 2016 and again in March 2017 (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.
15. 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 2015), 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 Husband’s presence in the home as well as her income. Clients must cooperate with the local office in determining initial and ongoing eligibility including completion of necessary forms. BAM 105 (January 2015), p. 8; 7 CFR 273.2(d)(1). In addition, they must completely and truthfully answer all questions on forms and in interviews. BAM 105, p. 8; 7 CFR 273.2(b)(iii). Finally, clients must report changes in circumstances that potentially affect eligibility or benefit amount within ten days of becoming aware of the change including the number of persons in the home. BAM 105, p. 10; 7 CFR 273.12(a)(1). Respondent acknowledged through her Application and at the hearing, her understanding of the obligation to report changes in household circumstances to the Department.

The Department determines eligibility for program benefits and group size based upon who lives together, the relationships of the people living together, whether they purchase and prepare food together, and whether there is some other eligible living arrangement. BEM 212 (October 2015), p. 1; 7 CFR 273.1(a), (b). Spouses who are legally married and live together must be in the same group. BEM 212, p. 1; 7 CFR 273.1(b)(1)(i). Respondent married Husband in June of 2014. The parties agree on that fact. However, the parties disagree as to when Husband was in the home. Respondent testified that Husband was in the home for the first six months of their marriage, then moved out, and did not return until 2017. The Department relies upon Respondent’s Affidavit that Husband was in the home. The Affidavit states in part:

At the present time my husband and granddaughter lives [sic] in the house with me...I got married in June of 2014 [sic] we were separated for over [sic] a short period of time and has [sic] started back living together....

This statement does not support the Department’s contention that Husband was in the home during the period between October 2015 and May of 2016 or March 2017. It is also notable that Respondent reported Husband in the home on the affidavit in February 2017; therefore, any failure to include Husband in the group in March 2017 is attributable to the Department and not Respondent. Therefore, the Department has not established that Respondent committed an IPV by failing to report Husband’s presence in the home.

The Department also asserts that Respondent failed to report her income during the same period. Earned income received by the client is considered in the calculation of a

client's FAP eligibility and amount of benefits. BEM 500 (July 2015); BEM 556 (July 2013), 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, p. 11-12; 7 CFR 273.10(b)(1)(i).

At the hearing and during her testimony, Respondent indicated that she had reported her income to her case worker. She failed to provide any details about when or how she reported it. But what is notable is that on Respondent's Redetermination from [REDACTED] 2015 and her SER Application from [REDACTED] 2016, Respondent failed to include any information about any income. Wage verifications from Employer show that she received one paycheck from Employer ten days before the Redetermination and one four days after. In addition, she received one paycheck six days before the SER Application and one paycheck eight days after the SER Application. This shows Respondent's clear intent to misrepresent her circumstances which affected her eligibility for FAP benefits. Therefore, MDHHS has 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, pp. 15-16. As discussed above, MDHHS has established by clear and convincing evidence that Respondent committed an IPV. There was no evidence of prior IPV's by Respondent. This was Respondent's first IPV for FAP; Respondent is subject to a 12-month disqualification from receipt of FAP benefits.

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 FURTHER ORDERED that Respondent be personally disqualified from FAP for a period of 12 months.

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-Wayne-76-Hearings
MDHHS-OIG-Hearings
Policy-Recoupment
L. Bengel
MOAHR

Respondent- Via USPS:

