



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]
[REDACTED]

Date Mailed: December 16, 2020
MOAHR Docket No.: 20-005076
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 14, 2020. Dory Bryant, Regulation Agent of the Office of Inspector General (OIG), represented the Department. 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).

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent receive an OI of Family Independence Program (FIP) benefits that the Department is entitled to recoup?
3. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
4. Should Respondent be disqualified from receiving FAP and 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. The Department's OIG filed a hearing request on July 8, 2020, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP and FIP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in income/employment and group size to the Department within 10 days.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the FIP fraud period is August 1, 2018 through October 31, 2018 (FIP fraud period).
7. The Department's OIG indicates that the time period it is considering the FAP fraud period is August 1, 2018 through February 28, 2019 (FAP fraud period).
8. During the FIP fraud period, Respondent was issued \$2,403 in FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$234 in such benefits during this time period.
9. During the FAP fraud period, Respondent was issued \$4,421 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$501 in such benefits during this time period.
10. The Department alleges that Respondent received an OI in FIP benefits in the amount of \$2,169 and an OI in FAP benefits in the amount of \$3,920.
11. This was Respondent's first alleged IPV.
12. 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

Department 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 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 233to 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.

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 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 that her Living Together Partner (LTP) was in her household, and that he had 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 that Respondent submitted on [REDACTED], 2018. The Department asserts that when completing the application process, Respondent acknowledged that she had received the Information Booklet advising her regarding "Things You Must Do," which explained reporting changes in circumstances, including employment and group size. Respondent did not report any other adult members in her household or any income/employment. Respondent reported that she lived at [REDACTED]. Respondent certified that the information she provided was true and accurate.

The Department also presented a semi-annual submitted on [REDACTED], 2018 and redeterminations submitted on [REDACTED], 2018 and [REDACTED], 2019. Respondent reported that the only members of her household were her children and that there was no income/employment in her household. Respondent did not report a change in address. Respondent certified in each document that the information she provided was true and accurate.

Additionally, the Department presented a lease agreement for the address of [REDACTED] with an effective date of February 23, 2018. The listed tenants are Respondent and her LTP, [REDACTED]. The Department also provided a CLEAR report for [REDACTED]. The report shows that [REDACTED] had a driver's license and car registration with a listed address of [REDACTED]. The Department also presented a Work Number report for [REDACTED]. The Document shows that [REDACTED] began working at the [REDACTED] on September 25, 2017. [REDACTED] received his first paycheck on October 24, 2017 and was continuously paid throughout the remainder of the fraud period. The report also shows that [REDACTED] reported the [REDACTED] address to the employer as his home address.

The Department testified that Respondent and [REDACTED] had a child in common and were living together. Therefore, Respondent and [REDACTED] should have been in the same group. As it follows, [REDACTED] income should have also been included when determining Respondent's FAP benefit amount.

FAP budget calculations require the consideration of the group size. The Department will determine who must be included in the FAP group prior to evaluating the non-financial and financial eligibility of everyone in the group. BEM 212 (July 2014), p. 1. The FAP group composition is established by determining all of the following: who lives together, the relationship(s) of the people who live together whether the people living

together purchase and prepare food together or separately, and whether the person(s) resides in an eligible living situation. BEM 212, p. 6. Living with means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. Persons who share only an access area such as an entrance or hallway or non-living area such as a laundry room are not considered living together. BEM 212, p. 3. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212.

For FIP benefits cases, group composition is the determination of which individuals living together are included in the FIP eligibility determination. BEM 210 (October 2014), p. 1. Mandatory group members include the dependent child and the dependent child's legal parents. BEM 210, p. 5. Each group members income and assets are considered. BEM 210, p. 4.

The Department presented sufficient evidence that Respondent and ██████████ were living together during the fraud period. Respondent submitted an application, a redetermination and a semi-annual during the fraud period indicating the same address at which ██████████ was residing. Respondent did not include ██████████ or his income in her household. Therefore, the Department sufficiently established that Respondent misrepresented her circumstances to fraudulently obtain benefits. Thus, the Department has established by clear and convincing evidence that Respondent intentionally withheld information for the purpose of maintaining her eligibility for FIP and FAP benefits and 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.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is subject to a 12-month disqualification under the FIP and FAP program, as it is her first IPV related to both programs.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. At the hearing, the Department established that the State of Michigan issued a total of \$4,421 in FAP benefits to Respondent during the fraud period. The Department alleges that Respondent was eligible for \$501 in FAP benefits during this period. The Department also established that the State of Michigan issued a total of \$2,403 in FIP benefits to Respondent during the fraud period. The Department alleges that Respondent was eligible for \$234 in FIP benefits during this period.

As stated above, the Department presented sufficient evidence to establish that Respondent's child's father was living in her household, and therefore, should have been included in her FIP and FAP group. The Department presented overissuance budgets showing the amount of FIP and FAP benefits Respondent received and the amount of FIP and FAP benefits she should have received with [REDACTED] and his income included. The Department established it is entitled to recoup/collect \$3,920 in FAP benefits and \$2,169 in FIP benefits that were overissued to Respondent.

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. The Department has established by clear and convincing evidence that Respondent committed an IPV concerning FAP and FIP.
2. The Department has established an OI of FAP program benefits of \$3,920 during the fraud period.
3. The Department has established an OI of FIP program benefits of \$2,169 during the fraud period.

The Department is ORDERED to do the following in accordance with Department policy:

1. initiate recoupment and/or collection procedures for the FAP OI amount of \$3,920, less any amounts that have already been recouped and/or collected; and
2. initiate recoupment and/or collection procedures for the FIP OI amount of \$2,169, less any amounts that have already been recouped and/or collected.

