



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 11, 2020
MOAHR Docket No.: 20-005077
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 held on December 9, 2020, via telephone conference line. MDHHS was represented by Ian Gill, regulation agent with the Office of Inspector General. Respondent participated and was unrepresented.

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 an application requesting Food Assistance Program (FAP) benefits. Reported household members included [REDACTED], Respondent's son (hereinafter, "Son"). Exhibit A, pp. 10-16.
2. On December 21, 2018, MDHHS sent Respondent a Notice of Case Action which included boilerplate stating that clients are to report income within 10 days.

3. From January 11, 2019, through May 2019, Son received income from [REDACTED] (hereinafter, "Employer").
4. From March 2019 through May 2019, Respondent received \$1,470 in FAP benefits based on \$0 employment income.
5. On April 16, 2019, Respondent submitted to MDHHS a Redetermination which reported that Son began employment in January 2019.
6. On June 4, 2019, MDHHS calculated that Respondent received an overissuance (OI) of \$571 in FAP benefits from March 2019 through May 2019 due to unreported income from Employer.
7. On June 6, 2019, MDHHS established a recipient claim against Respondent for \$571 in overissued FAP benefits from March 2019 through May 2019 due to client error.
8. On July 8, 2020, MDHHS requested a hearing to establish a 1-year disqualification period against Respondent stemming from overissued FAP benefits from March 2019 through May 2019.
9. As of the date of hearing, Respondent had no previous IPV disqualifications. Exhibit A, pp. 64-65.

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 an 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 received overissued FAP benefits from March 2019 through May 2019 due to purposely untimely reporting employment income for Son. Exhibit A, pp. 66-67.

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).

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

An IPV based on unreported and/or untimely reported income requires that unreported and/or untimely 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 FAP-OI budgets from March 2019 through May 2019 demonstrating how an OI was calculated. Exhibit A, pp. 56-62. Respondent’s actual FAP issuances were taken from documentation of issuances during the OI period which totaled \$1,470. Exhibit A, p. 47. Son’s actual gross pays from Employer during the OI months were factored as unreported, thereby depriving Respondent of a 20% credit for timely reporting income.³ Exhibit A, pp. 53-55. Using the procedures set forth in BEM 556, an OI of \$571 was calculated. Additionally, MDHHS presented documentation that a recipient claim of \$571 due to client-error was established against Respondent on June 6, 2019. Exhibit A, p. 63.

The evidence established that Respondent received an OI of \$571 in FAP benefits from March 2019 through May 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.

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 unreported income (BAM 715).

MDHHS alleged that Respondent should have been aware of the responsibility to report employment income. MDHHS presented an approval notice sent to Respondent on December 21, 2018. Exhibit A, pp. 21-28. The notice included boilerplate informing clients of the responsibility to report employment income to MDHHS within 10 days.⁴ Additionally, the notice sent to Respondent included a budget summary listing \$0 employment income being factored in the benefit determination.

The inclusion of boilerplate reporting responsibilities within documents signed by and/or sent to Respondent does not clearly and convincingly establish that Respondent read, understood, and/or retained the language. Similarly, including a summary listing that no employment income was factored in the determination does not place a client on notice of a responsibility to later report when income begins.

How MDHHS learned of untimely reported income is relevant to establishing a client's intent. MDHHS testified that it learned that Son was employed after Respondent submitted a Redetermination on April 16, 2019, which reported Son's employment. Exhibit A, pp. 32-39. Respondent's reporting does not definitively establish that she did not purposely delay in reporting Son's income, but the reporting is less consistent with the intent needed to establish an IPV.

Respondent testified that she requested that Son's employer complete income documentation. Respondent also testified that she expected Son's employer to forward income documentation to MDHHS. Respondent's testimony implied an argument that she did not purposely fail to timely report Son's income to MDHHS. Respondent's testimony was not corroborated, but it was also not contradicted by evidence.

A written misreporting of misinformation is highly persuasive evidence of an intent consistent with an IPV. MDHHS did not present evidence of a written misreporting by Respondent.

Given the evidence, Respondent might have purposely ignored the responsibility to report starting employment income, but this was not clearly and convincingly established. Thus, MDHHS failed to establish that Respondent committed an IPV.

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: 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.

⁴ MDHHS presented additional notices dated August 28, 2018 and September 8, 2018, which included similar reporting language. However, these notices also indicated that Respondent was a simplified reporter and only required to report when income exceeded a monthly income over \$2,000. Because Respondent was a simplified reporter at the time of these notices, they cannot be considered evidence of a responsibility to report employment income within 10 days.

Without a finding that Respondent committed an IPV, an IPV disqualification cannot follow. Thus, MDHHS is denied its request to establish a 1-year disqualification against Respondent.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish that Respondent committed an IPV stemming from FAP benefits overissued from March 2019 through May 2019. The MDHHS request to establish a FAP-related IPV disqualification against Respondent is **DENIED**.

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-GR8North-
Hearings@michigan.gov-Hearings
OIG Hearings
LBengel
Policy Recoupment
MOAHR

Respondent – Via First-Class Mail:

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