



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] MI [REDACTED]

Date Mailed: March 23, 2021
MOAHR Docket No.: 20-006397
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

The Michigan Department of Health and Human Services (MDHHS or the Department) requested a hearing alleging that Respondent 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 January 13, 2021.

Meghan Kerr, Regulation Agent of the Office of Inspector General (OIG), represented MDHHS.

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 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?
3. Did Respondent receive an overissuance (OI) of FAP benefits that MDHHS is entitled to recoup and/or collect as a recipient claim?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. From October 1, 2016 to May 31, 2017, Respondent received \$ [REDACTED] in FAP benefits for a one-person FAP group. (Exhibit A, p. 38)

2. On [REDACTED] 2016, Respondent applied for FAP for a household of one. Respondent reported no employment at that time. (Exhibit A, pp. 10-20)
3. Respondent's signature on the [REDACTED] 2016 Assistance Application certified that she read and understood her rights and responsibilities. This would include providing accurate information and timely reporting changes. (Exhibit A, p. 20)
4. During a July 12, 2016, interview for FAP, Respondent reported receiving gaming revenue. Respondent was reminded of the rights and responsibilities. (Exhibit A, p. 27)
5. On July 12, 2016, a Notice of Case Action was issued to Respondent approving FAP for a household size of one. This notice included a FAP budget summary showing the group had no earned income. This notice also advised Respondent of the responsibility to report any changes in circumstances that may affect eligibility within 10 days. A Change Report form was included. (Exhibit A, pp. 21-26)
6. The Department obtained verification from the [REDACTED] of Respondent's earnings from pay dates August 5, 2016 through June 30, 2017. (Exhibit A, pp. 29-31)
7. Respondent was aware of the responsibility to timely report any household changes, including changes with employment or income, to the Department. (Exhibit A, pp. 20-27)
8. Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the change reporting requirements. (Exhibit A, p. 14)
9. Respondent has no prior FAP IPV disqualifications. (Exhibit A, p. 1)
10. On [REDACTED] [REDACTED] 2020, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to timely report employment income and as a result, received FAP benefits from October 1, 2016, to May 31, 2017 (fraud period) that Respondent was ineligible to receive. OIG requested that (i) Respondent repay \$[REDACTED] to MDHHS for FAP benefits that Respondent was ineligible to receive and (ii) Respondent be disqualified from receiving FAP benefits for a period of 12 months due to committing an IPV. (Exhibit A, pp. 1-58)
11. 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 1, 2017), p. 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 a failure to timely report employment income resulting in receiving a greater amount of FAP benefits from October 1, 2016, to May 31, 2017 (fraud period) than Respondent was eligible to receive.

The Department has established that Respondent was aware of the responsibility to timely report changes to the Department, such as changes with income. Households must report

a change in the source of income including starting or stopping a job or changing jobs; if the change in employment is accompanied by a change in income. 7 CFR 273.12(a)(1)(i)(B) Department policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. This includes changes with earned income such as starting employment. BAM 105 (April 1, 2016), pp. 11-13. Respondent's signature on the [REDACTED] 2016 Assistance Application certified that she read and understood her rights and responsibilities. This would include providing accurate information and timely reporting changes. (Exhibit A, p. 20) During a July 12, 2016, interview for FAP, Respondent was reminded of the rights and responsibilities. (Exhibit A, p. 27) Further, the July 12, 2016 Notice of Case Action issued to Respondent approving FAP included a budget summary showing the group had no earned income. This notice also advised Respondent of the responsibility to report any changes in circumstances that may affect eligibility within 10 days. A Change Report form was included. (Exhibit A, pp. 21-26) Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the change reporting requirements. (Exhibit A, p. 14)

The record contained verification from the [REDACTED] of Respondent's earnings from pay dates August 5, 2016 through June 30, 2017. (Exhibit A, pp. 29-31) The Department determined that the failure to timely report the employment income resulted in an OI of FAP benefits from October 1, 2016, to May 31, 2017. (Exhibit A, pp. 39-55, Regulation Agent Testimony)

The evidence establishes that Respondent failed to timely report the employment income to the Department within 10 days, as required by policy. The verified income from employment was utilized to re-determine FAP eligibility during the fraud period. Respondent's failure to timely report the employment income resulted in an OI of 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, p. 16. As discussed above, MDHHS has established by clear and convincing evidence that Respondent committed an IPV. Respondent has no prior FAP IPV disqualifications. (Exhibit A, p. 1) Because this was Respondent's first IPV for FAP, Respondent is subject to a 12-month disqualification from receipt of FAP benefits.

Overissuance

When a client group receives more benefits than entitled to receive, MDHHS must attempt to recoup the OI as a recipient claim. 7 CFR 273.18(a)(2); BAM 700, (October 1, 2018), p. 1. The amount of a FAP OI is the benefit amount the client actually

received minus the amount the client was eligible to receive. 7 CFR 273.18(c)(1); BAM 720, p. 8; BAM 715 (October 1, 2017), p. 6; BAM 705 (October 1, 2018), p. 6.

In this case, MDHHS alleged that Respondent was overissued FAP benefits totaling \$ [REDACTED] during the fraud period.

From October 1, 2016 to May 31, 2017, Respondent received \$ [REDACTED] in FAP benefits for a one-person FAP group. (Exhibit A, p. 38) However, when the verified income from employment was utilized to re-determine FAP eligibility, Respondent's FAP group was only eligible to receive \$ [REDACTED] in FAP benefits during the fraud period. (Exhibit A, pp. 39-55) Therefore, MDHHS is entitled to repayment from Respondent of \$ [REDACTED] in overissued 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.
3. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED]

IT IS ORDERED that MDHHS initiate recoupment and/or collection procedures in accordance with MDHHS policy for a FAP OI in the amount of \$ [REDACTED] less any amounts already recouped/collected for the fraud period.

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

CL/ml



Colleen Lack
Administrative Law Judge
for Elizabeth Hertel, 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

DHHS

Amy Assante
Charlevoix County DHHS – via electronic mail

Petitioner

OIG – via electronic mail
PO Box 30062
Lansing, MI 48909-7562

Recoupment – via electronic mail

L. Bengel – via electronic mail

Respondent

██████████ – via first class mail
██████████
██████████ MI ██████████