



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: February 10, 2021
MOAHR Docket No.: 20-007049
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], formerly known as [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 February 4, 2021.

Joseph Gregurek, 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?
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. On [REDACTED] 2016, Respondent submitted an Application for FAP benefits listing herself and her two sons as well as income from employment with [REDACTED] (Employer 1).
2. At the time of Application, Respondent's son [REDACTED] (Son) was age [REDACTED] and was in full school time.
3. Respondent's signature on the Application acknowledged her understanding of program responsibilities including the responsibility to report changes in household income.
4. On May 11, 2016, the Department issued a Notice of Case Action to Respondent informing her that she was eligible for FAP benefits for a group size of three based upon \$1,655.00 in earned income.
5. The Notice of Case Action also reminded Respondent of the obligation to report changes in household circumstances including income within ten days.
6. In [REDACTED] 2016, Respondent reported the loss of her employment with Employer 1.
7. On [REDACTED] 2016, Son began employment with [REDACTED] (Employer 2) and continued in that employment through [REDACTED] 2017 working as little as 27 hours per week and as much as 55 hours per week.
8. On [REDACTED] 2016, the Department received a completed Semi-Annual Contact Report from Respondent indicating that there had been no changes in group composition or earned income from the previously budgeted \$0.00.
9. On September 7, 2016, the Department issued a Notice of Case Action to Respondent informing her that she was approved for FAP benefits for a group size of three based upon \$0.00 income and reminded her to report changes in circumstances to the Department.
10. On [REDACTED] 2016, Respondent began employment with [REDACTED] (Employer 3) where she continued through the pay period ending [REDACTED] 2017.
11. Respondent did not report Son's employment or her own.
12. From September 2016 through February 2017, Respondent received \$3,050.00 in FAP benefits for a three-person FAP group.
13. Respondent was aware of the responsibility to report changes in household circumstances to the Department as noted by her signature on the Application, the reminder from the Notice of Case Action, and her reporting of the loss of her employment with Employer 1.

14. Respondent does not have an apparent physical or mental impairment that would limit the understanding or ability to accurately report changes in household circumstances to the Department.
15. Respondent has one prior FAP IPV disqualification which was served between January 1, 1999 and December 31, 1999.
16. On May 31, 2019, the Department established a debt for overissued FAP benefits in the amount of \$2,908.00 for the period September 2016 through February 2017 based upon the unreported income from Employer 2.
17. On August 20, 2020, MDHHS' OIG filed a hearing request alleging that Respondent intentionally concealed and misrepresented her household income and as a result received FAP benefits from September 2016 through February 2017 that Respondent was ineligible to receive. OIG requested that (i) Respondent repay an additional \$142.00 to MDHHS for FAP benefits that Respondent was ineligible to receive after consideration of Employer 3 and (ii) Respondent be disqualified from receiving FAP benefits for a period of 24 months due to committing an IPV.
18. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Service 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 (January 2016), 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 Son’s as well as her own employment income. Earned income received by the client is considered in the calculation of a client’s FAP eligibility and amount of benefits. BEM 500 (January 2016); 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 (April 2016), p. 11; 7 CFR 273.10(b)(1)(i). In addition, clients must truthfully and completely answer all questions on the Application or forms submitted to the Department. BAM 105, p. 6. 7 CFR 273.2(b)(iii). Respondent was aware of the obligation to report changes in household circumstances as evidenced by her signing of her Application as well as her reporting of the loss of her employment as noted in Case Comments in [REDACTED] 2016 shortly after her initial Application.

At the time of Application, Son was [REDACTED] years old and in school full time. Based upon the Application, [REDACTED] he was likely to be graduating at the end of the school year, usually in June. In [REDACTED] 2017, Son began full time employment where he worked between 27 and 55 hours per week for approximately one year. According to Respondent’s testimony, she knew nothing of his employment and that he did it on his own. She further explained that during this time she was experiencing a great deal of hardship both economically and emotionally because of a recent divorce and the actions taken by her ex-husband. As a result, she described herself as “not coherent” and as having had “several nervous breakdowns” and anxiety. In addition, she stated she was unaware of her son’s employment until a couple of months later when he suddenly came to her with money to help out. Yet, Respondent still failed to report the income even when she became aware of it and even though she completed a Semi-Annual Contact Report and was issued a Notice of Case Action indicating that her household income was \$0.00. Based upon the unreported income from Employer 2 for Son, the Department established a claim for overissued FAP benefits in the amount of \$2,908.00 for the period September 2016 through February 2017.

Then, in [REDACTED] 2016, Respondent began her own employment with Employer 3. Again, she failed to report the employment. Respondent's only explanation was that reporting this income was simply the last thing on her mind and she was numb to the world.

In reviewing the evidence, it seems quite unlikely that Respondent had knowledge of Son working 40 or more hours per week especially because it was for an extended period of employment. Furthermore, he was residing in her home. Respondent herself would have been at home unemployed and would have seen Son coming and going around the same times of day each day for almost a year. She also would have seen his ability to purchase things on his own when she had not given him money. Finally, when he gave her money, she should have reported it, but did not. Respondent also should have reported her own income, but did not. Combining the two incomes placed Respondent's group's income over the income limits and if she had reported it, she would not have received FAP benefits. Given the length of time for which income went unreported and the amount of income, it seems likely that Respondent was intentionally concealing her household circumstances in order to maintain her benefits, especially given her financial difficulties. Respondent's testimony that she simply was not thinking about reporting the income is not credible especially given the opportunity to report the income on the Semi-Annual Contact Report. 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. There was evidence of one prior IPV by Respondent with the disqualification period served between January 1, 1999 and December 31, 1999. This was Respondent's second IPV for FAP; therefore, Respondent is subject to a 24-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 (January 2016), 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 (January 2016), p. 6.

In this case, MDHHS initially established a debt for \$2,908.00 in FAP benefits for the period September 2016 through February 2017 based solely on the unreported income from Son's employment at Employer 2. After further investigation, the Department discovered Respondent's unreported income from Employer 3. Once Respondent's income was considered in conjunction with Son's, the household income was greater than either the FAP gross or net income limit. RFT 250 (October 2015 & October

2016), p. 1; BEM 550 (October 2015), p. 1. The additional income which placed the group over the gross or net income limit resulted in an additional overissuance of FAP benefits totaling \$142.00. Therefore, MDHHS is entitled to repayment from Respondent of \$142.00 in overissued FAP benefits as a result of Respondent's failure to report her earned income from Employer 3.

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 24-month disqualification from FAP.
3. Respondent received an additional OI of FAP benefits in the amount of \$142.00.

IT IS ORDERED that MDHHS initiate recoupment and/or collection procedures in accordance with MDHHS policy for a FAP OI in the amount of \$142.00, 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 24 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-Muskegon-Hearings
MDHHS-OIG-Hearings
Policy-Recoupment
L. Bengel
MOAHR

Respondent- Via USPS:

