



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: March 3, 2021
MOAHR Docket No.: 20-007252
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 February 24, 2021.

Thomas Lilienthal, 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) and Medical Assistance (MA) Program benefits?
2. Should Respondent be disqualified from receiving benefits for FAP?
3. Has the Department established a claim for MA benefits paid on Respondent's behalf?

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] 2017, the Department received Respondent's Application for FAP benefits listing employment with Avon Automotive.
2. Respondent's signature on the Application acknowledges his understanding of his rights and responsibilities, including the obligation to report all changes in household circumstances within ten days.
3. On June 4, 2018, the Department received Respondent's completed Redetermination form on which he indicated that he did not have any sources of income.
4. On July 18, 2018, the Department issued a Notice of Case Action to Respondent informing him that his FAP benefit rate was calculated based upon zero earned income and reminded him of his responsibility to report changes in household circumstances to the Department.
5. On October 16, 2018, Respondent began employment with [REDACTED] (Employer 1).
6. On October 24, 2018, Respondent received his first paycheck from Employer 1.
7. On February 27, 2019, Respondent received his final paycheck from Employer 1.
8. On April 1, 2019, Respondent began employment with [REDACTED] (Employer 2).
9. On April 11, 2019, Respondent received his first and only paycheck from Employer 2.
10. On May 13, 2019, Respondent began employment with [REDACTED] (Employer 3).
11. On May 21, 2019, Respondent began employment with [REDACTED] (Employer 4).
12. On May 24, 2019, Respondent received his first and only paycheck from Employer 3.
13. On May 31, 2019, Respondent received his first paycheck from Employer 4.

14. On June 3, 2019, the Department received Respondent's completed Redetermination on which he listed income from employment with Employer 4 starting on May 21, 2019.
15. Between December 2018 and June 2019, the Department issued \$1,316.00 in FAP benefits to Respondent.
16. On July 30, 2019, the Department established a claim for overissued FAP benefits for the same period in the amount of \$977.00.
17. Between December 2018 and February 2019, the Department issued \$1,034.44 in MA payments on Respondent's behalf as he was enrolled in the Healthy Michigan Plan (HMP).
18. Respondent was aware of the responsibility to report changes in household circumstances to the Department.
19. Respondent does not have an apparent physical or mental impairment that would limit the understanding or ability to accurately report changes in income to the Department.
20. Respondent has no prior FAP IPV disqualifications.
21. On August 31, 2020, MDHHS' OIG filed a hearing request alleging that Respondent intentionally concealed his employment income from the Department and as a result received FAP and MA benefits from December 2018 through June 2019 (fraud period) that Respondent was ineligible to receive. OIG requested that (i) Respondent repay \$1,034.44 to MDHHS for MA 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.
22. 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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396 to 42 USC 1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10 to 42 CFR 430.25. MDHHS administers the MA program pursuant to 42 CFR 435, MCL 400.10 and MCL 400.103 to MCL 400.112k of the Social Welfare Act, MCL 400.1 *et seq.*

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 2017), 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 his failure to report changes in earned income to the Department within ten days. Policy provides that earned income is considered in determining eligibility for FAP and MA benefits. BEM 500 (July 2017); BEM 501 (October 2018). Clients are required to report changes in household circumstances to the Department within ten days of the change itself. BAM 105 (October 2018), pp. 11-12. For changes in income, the client must report starting or stopping employment, changing employers, change in a rate of pay, change in work hours of more than five hours per week that is expected to continue for more than a month, and in MA cases a change in gross monthly income of more than \$25.00 since the last reported change. *Id.*

Respondent was informed of each of these requirements via his Application for benefits dated [REDACTED] 2017. His signature on the Application acknowledged his understanding

of the program requirements. He was also reminded of his obligation to report changes in income and that his FAP benefits were based upon \$0.00 monthly income via the Notice of Case Action dated July 18, 2018.

In June 2019, Respondent reported his employment with Employer 4, but he failed to report his previous three jobs between October 2018 and May 2019. A review of the Work Number Report shows that Respondent worked for Employer 1 between October 2018 and February 2019 and had weekly wages between \$225.58 for his final paycheck to as much as \$806.73. He never reported this employment even though he worked there for approximately four months. In addition, Respondent worked for Employer 2 from April 1, 2019 through April 12, 2019. He did not report this employment. Then Respondent worked for Employer 3 for a week in May, but again did not report it. Finally, Respondent started work with Employer 4 on May 21, 2019, received his first paycheck on May 31, 2019, and reported this income to the Department on time on June 3, 2019 via the Redetermination.

Respondent worked for Employer 1 for approximately four months and failed to report significant income. The duration in time, his weekly wages, as well as the dollar amount are indicative of Respondent's efforts to conceal his income in order to maintain his FAP benefits. The Department has met its burden of proof in establishing an IPV by clear and convincing evidence.

FAP 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 no evidence of prior IPV's by Respondent. This was Respondent's first IPV for FAP; therefore, Respondent is subject to a 12-month disqualification from receipt of FAP benefits.

MA OI

While working for all four employers between December 2018 and June 2019, Respondent was enrolled in HMP. HMP provides MA coverage to individuals who (i) are 19 to 64 years of age; (ii) have income at or below 133% of the federal poverty level (FPL) under the Modified Adjusted Gross Income (MAGI) methodology; (iii) do not qualify for or are not enrolled in Medicare; (iv) do not qualify for or are not enrolled in other MA programs; (v) are not pregnant at the time of application; and (vi) are residents of the State of Michigan. MPM, Healthy Michigan Plan, § 1.2.

The 2018 FPL for a group size of one, as no evidence was presented that Respondent was married and had any dependents, was \$12,140.00. <https://aspe.hhs.gov/2018-poverty-guidelines>. The 2019 FPL for a group size of one was \$12,490.00. <https://aspe.hhs.gov/2019-poverty-guidelines>. Therefore, the HMP annual income limit was \$16,753.20 for 2018 and \$17,236.20 for 2019 after the 5% disregard is applied.

Broken down, Respondent could have received up to \$1,396.10 in December 2018 or \$1,436.35 per month in 2019 of Modified Adjusted Gross Income (MAGI).

MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500, p. 3. To determine income in accordance with MAGI rules, a client's adjusted gross income (AGI) is added to any tax-exempt foreign income, tax-exempt Social Security benefits, and tax-exempt interest. It is calculated by taking the "federal taxable wages" for each income earner in the household as shown on the paystub or, if not shown on the paystub, by using gross income before taxes reduced by any money the employer takes out for health coverage, childcare, or retirement savings. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>.

The Department relied upon the Work Number Reports for each employer to determine Respondent's eligibility for benefits. However, since the Department is only seeking an MA OI for the period while Respondent was working with Employer 1, this decision only evaluates Respondent's eligibility for MA benefits between December 2018 and February 2019. During this period, Respondent had the following wages:

December 2018	\$3,120.87
January 2019	\$3,412.91
February 2019	\$2,354.55

The Work Number Report does not present any information related to health coverage, childcare, or retirement savings. Furthermore, Respondent did not appear for the hearing to present evidence on any of these items. Therefore, it is assumed that Respondent did not have deductions for these items and that his gross income is equal to his MAGI. In each month of the OI period, Respondent's MAGI was significantly greater than the HMP income limit even after consideration of the 5% disregard. Therefore, he was ineligible for MA HMP benefits.

The Department initiates MA recoupment of an OI due to client error, not when due to agency error or IPV. BAM 710 (January 2018), p. 1. Client errors occur when a client receives more benefits than they are entitled to receive because the client gave incorrect or incomplete information to the Department. BAM 700 (October 2018), p. 7. For an OI due to any other reason other than unreported income or a change affecting need allowances, the OI amount is the amount of MA payments. BAM 710, p. 2. Since Respondent was ineligible for benefits but received benefits because he failed to report his income, Respondent is responsible for an MA OI.

In support of the MA OI, the Department presented an MA capitations report showing all payments made for Respondent's MA coverage. The report shows that \$1,034.44 in MA capitations were issued on Respondent's behalf for his MA coverage between December 2018 and February 2019. As discussed previously, he was ineligible for MA benefits for this period because he had income greater than the income limit. Therefore, he is responsible for an MA OI totaling \$1,034.44.

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 received the benefit of MA payments issued on his behalf totaling \$1,034.44.

IT IS ORDERED that MDHHS initiate recoupment and/or collection procedures in accordance with MDHHS policy for a MA OI in the amount of \$1,034.44, 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.

AMTM/cc



Amanda M. T. Marler
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

Via Email:

MDHHS-GR8North-Hearings
MDHHS-OIG-Hearings
Policy-Recoupment
L. Bengel
MOAHR

Respondent- Via USPS:

