



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: March 19, 2021
MOAHR Docket No.: 20-007554
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 March 8, 2021. Thomas Malik, 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 the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
2. Should Respondent be disqualified from receiving FAP benefits?

FINDINGS OF FACT

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

1. Respondent was a recipient of FAP benefits issued by the Department. From April 1, 2018 to December 31, 2018 (FAP fraud period), Respondent was issued \$4,486 in FAP benefits by the State of Michigan and the Department alleges that Respondent was entitled to \$52 in such benefits during this time period, resulting in a FAP OI of \$4,434.

2. On [REDACTED], 2018, Respondent signed and submitted an assistance application requesting FAP benefits from the Department. Respondent reported that [REDACTED] is her husband and a household member. Respondent reported that she and her husband did not have any earned income or employment on the assistance application. Respondent reported that her husband does not have a return to work date and that he has been off of work since December 15, 2017. (Exhibit A, pp. 10-59)
3. The Department asserted that Respondent was advised of her responsibility to accurately report her circumstances and to report changes in her circumstances to the Department, including changes in employment and both earned and unearned income for herself and her household members.
4. On February 20, 2018, the Department sent Respondent a Notice of Case Action advising her of her approval for FAP benefits. The Notice of Case Action advised Respondent of the responsibility to report changes in circumstances, including changes in employment and income and that her FAP benefits were determined based on \$0 in reported earned and unearned income. (Exhibit A, pp. 60-65)
5. The Department asserted that it had no reason to believe that Respondent had a physical or mental impairment that would limit her understanding or ability to fulfill her reporting requirements.
6. The Department obtained verification of employment for Respondent's husband showing that he had earnings from [REDACTED] (Employer 1) for the second and third quarters of 2018 and weekly earnings from [REDACTED] (Employer 2) starting September 30, 2018 and continuing through December 23, 2018. (Exhibit A, pp. 67-68)
7. The Department also discovered that Respondent's husband began receiving unearned income from unemployment compensation benefits (UCB) on February 28, 2018, which continued until April 30, 2018 and that was not reported to the Department. (Exhibit A, p. 66)
8. The Department's OIG filed a hearing request on or around September 14, 2020 alleging that Respondent intentionally failed to report her husband's earned income from employment and unearned income from UCB, and as a result received FAP benefits that she was ineligible to receive, causing a FAP OI of \$4,434.
9. This was Respondent's first alleged IPV and the Department requested that Respondent be disqualified from receiving FAP benefits for 12 months.
10. The Department has established a client error FAP OI claim in the amount of \$4,434 and is not seeking a decision on recoupment of the FAP OI.

11. A Notice of Hearing was mailed to Respondent at her last known address and was not returned by the US Post Office 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.

As a preliminary matter, although the Department presented evidence in Exhibit A in support of a FAP OI in the amount of \$4,434, the Department testified that a client error caused OI had previously been established in this matter. Thus, because a client error OI has already been established in this matter, a decision will not be issued on the OI of \$4,434 for the FAP fraud period. The Department proceeded with its hearing request regarding the alleged IPV and FAP disqualification.

Intentional Program Violation

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), p. 5, 12-13. An IPV occurs when a recipient of Department benefits intentionally (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation FAP, FAP federal regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FAP benefits or electronic benefit transfer (EBT) cards. 7 CFR 273.16(c).

To establish an IPV, the Department must present clear and convincing evidence that the household member committed, and intended, to commit the IPV or intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. 7 CFR 273.16(e)(6); BAM 720, p. 1. Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01; *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 114-115; 793 NW2d 533, 541 (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 requires that an OI, and all three of the following exist: the client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and the individual was also clearly and correctly instructed regarding his or her reporting responsibilities and the individual have no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 720, p. 1.

In this case, the Department alleges that Respondent committed an IPV because she failed to timely report to the Department that her husband, ██████████, a mandatory household member began receiving UCB and later, was employed and earning income from Employer 1 and Employer 2, causing an overissuance. Clients must completely and truthfully answer all questions on forms and in interviews. Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes such as starting or stopping employment, earning income, and starting or stopping a source of unearned income must be reported within ten days of receiving the first payment reflecting the change. BAM 105 (January 2018), pp. 9-12; 7 CFR 273.12(a)(1); 7 CFR 273.21.

The Department contended that Respondent’s failure to timely report the unearned income from UCB and the employment and earned income caused an OI of FAP benefits in the amount of \$4,434 from April 1, 2018 to December 31, 2018. The Department presented verification of ██████████ employment and earnings, showing that he had earnings from Employer 1 for the second and third quarters of 2018 and weekly earnings from Employer 2 starting September 30, 2018 and continuing through December 23, 2018. (Exhibit A, pp. 67-68). The Department also presented evidence that ██████████ received UCB beginning February 26, 2018 and continuing through April 30, 2018 and that was not reported to the Department. (Exhibit A, pp. 66)

In support of its contention that Respondent committed an IPV, the Department presented a ██████████, 2018 assistance application completed by Respondent and submitted to the Department prior to the alleged fraud period and before ██████████ income start date, on which he is identified as her husband and the father of Respondent’s children, thereby making him a mandatory member of the FAP group whose income and employment must be reported to the Department. Respondent was further advised of her income reporting responsibilities upon receipt of the February 20, 2018 Notice of Case Action, as a Change Report was included with the Notice of Case Action.

While there was no evidence that Respondent’s husband had any earned or unearned income at the time that Respondent completed the ██████████, 2018 assistance application, the evidence presented showed that he was approved for UCB effective February 11, 2018, and received his first payment on February 26, 2018, just one week

after the Notice of Case Action was issued. Furthermore, Respondent's household was approved for FAP benefits of \$640 monthly, which is the maximum amount of monthly FAP benefits allowable for a household size of four and which is based on \$0 in reported earned and unearned income. A review of the verification of employment and other evidence including the OI budgets show that throughout the FAP fraud period, Respondent's husband was employed and earning income in gross monthly amounts of up to \$3,413, which was unreported to the Department.

The Department's evidence showed that despite being advised of her reporting responsibilities with respect to her household's income and employment, Respondent failed to accurately and timely report to the Department that [REDACTED] gained employment and was earning income and that he was receiving UCB. Therefore, because Respondent failed to accurately and timely report the unearned income from UCB and the earned income from employment of a mandatory group member to the Department within 10 days of his first pay date, the Department's evidence establishes, by clear and convincing evidence that Respondent intentionally withheld information for the purpose of establishing or maintaining benefit eligibility and as such, committed an IPV.

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). 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.

As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV of the FAP. No evidence of any prior FAP IPVs was presented. Because this was Respondent's first FAP IPV, she is subject to a one-year disqualification from receipt of 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. The Department **has** established by clear and convincing evidence that Respondent committed an IPV of the FAP.

It is FURTHER ORDERED that Respondent be disqualified from the FAP for a period of **12 months**.

ZB/jem



Zainab A. Baydoun
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-Monroe-Hearings
MDHHS-OIG-Hearings
Policy-Recoupment
L. Bengel
MOAHR

Respondent – Via First-Class Mail:

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