



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: May 5, 2023
MOAHR Docket No.: 22-004585
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 April 12, 2023. Katrina Tibbits, Regulation Agent of the Office of Inspector General (OIG), represented MDHHS. Respondent appeared and was unrepresented.

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?

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 ██████████ 2020, MDHHS received a FAP application from Respondent.
2. In the application, Respondent reported ██████ household members (herself, her husband ("Spouse"), and their ██████ children, ██████ ("Son"), ██████ ("Daughter A") and ██████ ("Daughter C")). No income was reported. (Exhibit A, pp. 8-19.)
3. The notes from Respondent's ██████████ 2020 interview with MDHHS showed that Respondent reported that the household did not have income and they were

currently looking for jobs. The notes also indicated that the worker explained the reporting obligations to Respondent and she indicated that she understood these responsibilities. (Exhibit A, pp. 19-20, 41).

4. On [REDACTED] 2020, MDHHS sent Respondent a Notice of Case Action notifying her that she was approved for [REDACTED] in monthly FAP benefits based on a [REDACTED]-person FAP group composed of herself, Spouse, Son, Daughter A, and Daughter C (Exhibit A, pp. 22-29).
5. The October 26, 2020 Notice of Case Action indicated that the monthly benefit amount was based on \$0 in earned income and included a change report that could be used to report changes in the household's income (Exhibit A, pp. 23, 27-29).
6. Reports from Equifax Verification Services showed that Spouse was employed at [REDACTED] ("Employer SS") as of [REDACTED] 2020; Daughter A was employed at [REDACTED] ("Employer SN") as of [REDACTED] 2020; and Son was employed at [REDACTED] ("Employer M") as of [REDACTED] 2020 (Exhibit A, pp. 30-36).
7. The case comments maintained by the MDHHS workers on Respondent's case show that MDHHS became aware of Son's employment income via an electronic cross-check of new hires, and on November 2, 2020, MDHHS sent out a New Hire form requesting verification of Son's income at Employer M. The notes indicate that MDHHS would check the Work Number (now, Equifax Verification Services) if the form was not returned by November 12, 2020. (Exhibit A, p. 41.)
8. On March 31, 2021, MDHHS reviewed Respondent's FAP case for the overdue new hire, found Son's income on the Work Number (Equifax Verification Services), and added Son's income to Respondent's FAP budget (Exhibit A, p. 40).
9. On June 30, 2021, MDHHS became aware via an electronic cross-match that Spouse was employed at Employer SS (Exhibit A, p. 40).
10. Respondent was aware of the responsibility to report income and does not have an apparent physical or mental impairment that would limit the understanding or ability to accurately report income.
11. From [REDACTED] 2021 to [REDACTED] 2021, Respondent received [REDACTED] in FAP benefits for a [REDACTED]-person FAP group consisting of herself, Spouse, and their three children, but MDHHS alleged the household was not eligible for [REDACTED] of the FAP benefits issued during this time when the household's earned income was considered in the calculation of the FAP budget (Exhibit A, p. 45).
12. Respondent has no prior FAP IPV disqualifications.

13. On December 1, 2021, MDHHS sent Respondent a Department and Client Error Information and Repayment Agreement notifying her that she received ██████ in FAP benefits that her FAP group was ineligible to receive based on the household's earned income. MDHHS received Respondent's signed Repayment Agreement on ██████ 2021.
14. On September 30, 2022, MDHHS's OIG submitted a hearing request alleging that Respondent committed an IPV concerning her FAP case by intentionally failing to report her FAP group's earned income that resulted in the group receiving FAP benefits from February 1, 2021 to June 30, 2021 (fraud period) it was ineligible to receive. MDHHS indicated it had previously established the overissuance and requested the hearing only for purposes of establishing the IPV and disqualification.

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 makes 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 ██████ or more or (2) the total repayment amount sought from Respondent for all programs combined is less than ██████ 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.

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.

MDHHS policy requires that MDHHS consider all countable earned and unearned income in determining a client’s eligibility for program benefits. BEM 500 (July 2020), pp. 1-5. Income changes must be considered in determining eligibility. BAM 105 (July 2020), p. 19; BEM 500 (July 2020), pp. 1-5. Clients must report new earnings within 10 days of the first payment reflecting the change. BAM 105, p. 12. At application, MDHHS must check all available automated systems matches to see if income has started, stopped or changed, but Equifax Verification Services is **not** an automated system match which MDHHS is required to check at application. BAM 105, p. 19; BEM 501 (January 2021), p. 9.

In this case, MDHHS alleges that Respondent committed an IPV due to her failure to report her household’s income. In the FAP application MDHHS received from Respondent on [REDACTED] 2020, Respondent reported that no one in the household received any employment income (Exhibit A, p. 14). The MDHHS case comments entered by the worker show that in her [REDACTED] 2020 FAP interview, Respondent again reported that there was no income received by anyone in the household and they were looking for work after moving to Livingston County in September 2020 due to the loss of their home (Exhibit A, pp. 19-20). That same day, MDHHS sent Respondent a Notice of Case Action notifying her that her group was approved for FAP based on [REDACTED] of earned income (Exhibit A, pp. 22-23). Both in the interview and via a change report included with the Notice of Case Action, MDHHS advised Respondent of her responsibility to report changes to MDHHS, including changes in income (Exhibit A, pp. 41, 27-29).

The Equifax Verification Services printout produced by MDHHS showed that Son was employed by Employer M starting [REDACTED] 2020 and he received his first paycheck on [REDACTED] 2020. Thus, Son was employed at the time of Respondent’s [REDACTED] 2020 FAP application and had received his first paycheck as of Respondent’s [REDACTED] 2020 FAP interview with MDHHS. Although MDHHS became aware of this employment as of [REDACTED] 2020 through an electronic cross-match and sent Respondent a new hire form requesting Son’s employment income, MDHHS was not required to check Equifax Verification Services at the time of Respondent’s application. There was no evidence presented that Respondent responded to the new hire form or that she reported Son’s employment to the MDHHS worker during her FAP interview. Further, Spouse started his employment with Employer SS on [REDACTED] 2020, just two weeks after Respondent’s FAP interview with MDHHS, and there was no evidence that Respondent timely reported this employment to MDHHS within [REDACTED] days of Spouse’s first paycheck on [REDACTED] 2020.

At the hearing, Respondent alleged that she had provided paystubs to MDHHS via email. Clients may report changes in person, by mail, or by telephone. BAM 105, p. 13. A Change Report Form, DHS-2240, may be used to report changes. BAM 105, p. 13. However, Respondent did not produce any of the emails to establish that she provided MDHHS with the paystubs prior to the [REDACTED] 2021 to [REDACTED] 2021 fraud period. When further questioned, Respondent identified an MDHHS worker to whom she provided the paystubs, but the case comments showed that this worker was involved in processing semi-annual and redetermination forms in Respondent's case *after* the fraud period (Exhibit A, pp. 38-39). Thus, Respondent failed to establish that she reported the household's income at the time of her [REDACTED] 2022 application or at any time prior to the fraud period.

Because Respondent's household had income at, and very shortly after, the October 19, 2020 FAP application and October 26, 2020 FAP interview that she failed to report, 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 no prior IPV's by Respondent. Because this was Respondent's first IPV for FAP, Respondent is subject to a 12-month 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. MDHHS has established by clear and convincing evidence that Respondent committed an IPV regarding FAP.
2. Respondent is subject to a [REDACTED] month disqualification from FAP.

IT IS ORDERED that Respondent be personally disqualified from FAP for a period of [REDACTED] months.

ACE/tlf



Alice C. Elkin
Administrative Law Judge

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-Electronic Mail :

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