



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

██████████
██████████
████████████████████

Date Mailed: August 21, 2023
MOAHR Docket No.: 23-001116
Agency No.: ██████████
Petitioner: OIG
Respondent: █████ █████

ADMINISTRATIVE LAW JUDGE: Danielle Nuccio

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 July 27, 2023. Brian Siegfried, 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. Respondent was an ongoing recipient of FAP for a group size of one.

2. On September █ 2019, MDHHS received a redetermination of benefits from Respondent in which she reported that she is employed at █ (Employer) (Exhibit A, pp. 11-18).
3. On October █ 2019, MDHHS issued a Notice of Case Action to Respondent, informing her that she was eligible for FAP benefits for a group size of one based upon \$█ in earned income. MDHHS notified Respondent that she is a Simplified Reporter and that the only change she is responsible to report for FAP is if her household income exceeds the limit of \$1,354.00 (Exhibit A, pp. 19-25).
4. On October █ 2020, Respondent submitted an application for FAP benefits for a one-person group. Respondent reported that her employment at Employer 1 had ended, and she now receives Unemployment Compensation Benefits (UCB). Prior to submission of the application, Respondent must review rights and responsibilities as a benefit recipient (Exhibit A, pp. 26-31).
5. On October █ 2020, MDHHS issued a Notice of Case Action to Respondent, informing her that she was eligible for FAP benefits based upon \$0.00 earned income and reminding her of the obligation to report changes in household circumstances to MDHHS within ten days. A blank Change Report form was provided with the Notice of Case Action to facilitate the reporting of any future changes to MDHHS timely (Exhibit A, pp. 32-39).
6. On July █ 2021, MDHHS received a redetermination of benefits from Respondent in which she reported that her UCB will end on September 2, 2021 and after that she will no longer have any income (Exhibit A, pp. 40-42).
7. On August █ 2021, MDHHS interviewed Respondent as part of the redetermination process. Respondent confirmed that she is not employed and her UCB is ending (Exhibit A, pp. 43-45).
8. On August █ 2021, MDHHS issued a Notice of Case Action to Respondent, informing her that she was eligible for FAP benefits based upon \$0.00 earned income and reminding her of the obligation to report changes in household circumstances to MDHHS within ten days. A blank Change Report form was provided with the Notice of Case Action to facilitate the reporting of any future changes to MDHHS timely (Exhibit A, pp. 46-53).
9. Respondent is one of two account holders for Employer.
10. From July 1, 2020 through September 30, 2020, Respondent received \$█ in FAP benefits for a one-person FAP group (Exhibit A, pp. 198-199).
11. From December 1, 2020 through September 30, 2021, Respondent received \$█ in FAP benefits for a one-person FAP group (Exhibit A, pp. 200-205).

12. Respondent does not have an apparent physical or mental impairment that would limit the understanding or ability to accurately report employment income.
13. Respondent has no prior FAP IPV disqualifications.
14. On February 27, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to report employment income from Employer to MDHHS and as a result:
 - a. From July 1, 2020 through September 30, 2020 (fraud period 1) Respondent received FAP benefits that she was not eligible to receive. OIG requested that Respondent repay \$██████ to MDHHS for FAP benefits that Respondent was ineligible to receive during fraud period 1.
 - b. From December 1, 2020 through September 30, 2021 (fraud period 2) Respondent received FAP benefits that she was not eligible to receive. OIG requested that Respondent repay \$██████ to MDHHS for FAP benefits that Respondent was ineligible to receive during fraud period 2.
 - c. OIG requested that Respondent be disqualified from receiving FAP benefits for a period of 12 months due to committing a FAP IPV.
15. 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 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 failure to report employment income from Employer. Earned income received by the client is considered in the calculation of a client’s FAP eligibility and amount of benefits. BEM 500 (July 2020); BEM 556 (January 2020), pp. 2-3; 7 CFR 273.9(a). In this case, MDHHS presented evidence that Respondent is one of two joint account holders for Employer. MDHHS alleges that based upon the deposits made to Employer’s account, Respondent had earned income that she failed to report to MDHHS. However, MDHHS failed to present any evidence that the funds deposited into Employer’s account were then transferred or given to Respondent. Given that Respondent was not the sole account holder, the funds Employer received may have only been accessed by the other account holder. Upon review, the bank records introduced by MDHHS do not show that any withdrawals were made by Respondent or that any funds were issued to Respondent. While MDHHS sufficiently presented that Employer had deposits during the alleged fraud periods, they did not show that Respondent’s statements that she no longer received income from Employer were untruthful. Since MDHHS did not show that Respondent had unreported income during either fraud period and did not show that Respondent failed to report such income to MDHHS with the intent to fraudulently maintain FAP benefits, MDHHS has failed to satisfy their burden of proof by 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 **not** established by clear and convincing evidence that Respondent committed an IPV. Therefore, Respondent is **not** subject to a period of disqualification from FAP.

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 2018), p. 1-2. 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 2017), pp. 5-7. MDHHS calculates the OI total for each fraud period by

calculating what Respondent's FAP budget would have been if his earned income from employment would have been included in the budget. MDHHS then subtracts the correct benefit amount from the actual benefit amount to determine the OI amount.

As discussed, MDHHS has failed to establish that Respondent received unreported income during the alleged fraud period. MDHHS included income that Employer earned during the fraud period into Respondent's household budget in order to calculate the overissuance amount. However, as discussed, no evidence that Respondent received or had access to this income was presented. Therefore, the income should not have been included in Respondent's household budget when determining whether Respondent received FAP benefits that she was not entitled to. MDHHS has failed to establish that Respondent was overissued FAP benefits in this case.

Therefore, MDHHS is **not** entitled to repayment from Respondent of \$ [REDACTED] in overissued FAP benefits.

DECISION AND ORDER

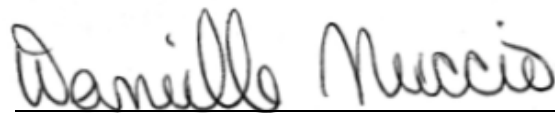
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. MDHHS has **not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent is **not** subject to a 12-month disqualification from FAP.
3. Respondent did **not** receive an OI of FAP benefits.

IT IS ORDERED that MDHHS delete the \$ [REDACTED] overissuance amount in its entirety and cease any recoupment/collection action.

IT IS FURTHER ORDERED that Respondent **not be** disqualified from FAP for a period of 12 months.

DN/dm



Danielle Nuccio
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 :

Petitioner
OIG
**MDHHS-OIG-
HEARINGS@michigan.gov**
DHHS
Greg Walker
Alpena County DHHS
**MDHHS-GR8North-
Hearings@michigan.gov**

Policy-Recoupment

StebbinsN

BSC1HearingDecisions

MOAHR

Via-First Class Mail :

Respondent

██████████
██████████
██