



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 3, 2023
MOAHR Docket No.: 23-001119
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

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 Mohamed Elgirsch 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 31, 2023. Derrick Gentry, 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?

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 November [REDACTED] 2021, Respondent submitted an application for FAP benefits for a five-person group. Prior to submission of the application, Respondent must review rights and responsibilities as a benefit recipient (Exhibit A, pp. 11-17).

2. On November █ 2021, MDHHS interviewed Respondent as part of the FAP application process. As part of the interview, rights and responsibilities are explained to Respondent by MDHHS (Exhibit A, pp. 18-21).
3. On December 9, 2021, Respondent began employment at █ █ █ (Employer 1), receiving his first paycheck on December █ 2021. Respondent was terminated from employment on February 1, 2022 (Exhibit A, pp. 34-35).
4. From February 1, 2022 through February 28, 2022, Respondent received \$ █ in FAP benefits for a five-person FAP group (Exhibit A, p. 37).
5. On June 14, 2022, Respondent began to work for █ █ █ (Employer 2), receiving his first paycheck on June █ 2022. As of January 10, 2023, Respondent was still actively employed (Exhibit A, pp. 31-33).
6. On October █ 2022, MDHHS received a renewal of benefits form from Respondent in which Respondent reported that he is not employed, and the only household income is from contributions from family (Exhibit A, pp. 21-22).
7. From September 1, 2022 through December 31, 2022, Respondent received \$ █ in FAP benefits for a five-person FAP group (Exhibit A, pp. 37-38).
8. Respondent does not have an apparent physical or mental impairment that would limit the understanding or ability to accurately report employment or household income.
9. Respondent has no prior FAP IPV disqualifications.
10. On February 23, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to report earned income from employment and as a result received FAP benefits from February 1, 2022 through February 28, 2022 (fraud period 1) and from September 1, 2022 through December 31, 2022 (fraud period 2) that Respondent was ineligible to receive. OIG requested that Respondent be disqualified from receiving FAP benefits for a period of 12 months due to committing an IPV. OIG stated that the FAP overissuance amount, which exceeded \$500, was previously established and is not at issue in this case.
11. 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 (IPV):

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 failing to report employment income with the intention to fraudulently maintain or prevent reduction in his FAP benefits. 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 501 (July 2021), pp. 6-7; BEM 556 (October 2021), p. 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 (October 2021), p. 12; 7 CFR 273.10(b)(1)(i). MDHHS then has ten days to process the change and, if it results in a decrease in benefits, it gives the client 12 days before the negative action impacts the benefits issued. BAM 220 (November 2021), pp. 7, 12. Additionally, FAP recipients are expected to be truthful in all communications with MDHHS. BAM 105, p. 9.

Here, Respondent applied for FAP benefits on November █, 2021. Prior to submitting the application, Respondent was required to review the rights and responsibilities as a benefit

recipient, including reporting changes in employment and income. Respondent was then interviewed on November █ 2021 by MDHHS and reminded of his responsibilities to timely report changes to MDHHS. Shortly after, on December 9, 2021, Respondent began to work for Employer 1, until he was terminated from employment on February 1, 2022. On June 14, 2022, Respondent began to work for Employer 2, receiving his first paycheck on June █ 2022. As of January 10, 2023, Respondent was still actively employed. Respondent did not report either of these positions and income to MDHHS. On October █ 2022, MDHHS received a renewal of benefits form from Respondent in which Respondent reported that he is not employed, and the only household income is from contributions from family. This misrepresentation is highly indicative of the intent to fraudulently obtain FAP benefits consistent with an IPV. MDHHS's has shown by clear and convincing evidence that Respondent intentionally failed to report his employment income for the purpose of establishing, maintaining, increasing or preventing reduction of FAP benefits.

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 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.

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. The OI amount was previously established by MDHHS and not at issue in this case.

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.

IT IS ORDERED that Respondent be personally disqualified from FAP for a period of 12 months.



Danielle Nuccio
Administrative Law Judge

DN/dm

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

