



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 21, 2023
MOAHR Docket No.: 23-001403
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION FOR
INTENTIONAL PROGRAM VIOLATION**

Upon the request for a hearing by the Michigan Department of Health and Human Services (MDHHS), this matter is before the undersigned administrative law judge 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. After due notice, a hearing was held via telephone conference line on August 3, 2023. MDHHS was represented by Thomas Lilienthal, regulation agent with the Office of Inspector General. Respondent did not participate despite being given at least 15 minutes from the scheduled hearing time to call.

ISSUES

The issue is whether MDHHS clearly and convincingly established that Respondent committed a Food Assistance Program (FAP)-related intentional program violation (IPV) which justifies imposing a disqualification period.

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 applied for FAP benefits, and reported ongoing employment. Respondent also reported that [REDACTED] [REDACTED] Respondent's spouse (hereinafter, "Spouse") was a household member who was recently laid-off from employment.
2. On December [REDACTED] 2021, MDHHS sent Respondent notice of FAP benefit approval beginning December 2021 based on \$[REDACTED] in monthly wages for Respondent. Boilerplate language advised Respondent to report when gross monthly household income exceeded \$3,855.

3. In January 2022, Respondent's benefit group's gross income exceeded \$3,855.
4. On March [REDACTED] 2022, MDHHS sent Respondent notice of FAP benefit approval beginning May 2022 based on \$[REDACTED] in wages for Respondent. Boilerplate language informed Respondent to report when gross monthly household income exceeded \$3,855.
5. From April through October 2022, MDHHS issued \$[REDACTED] in FAP benefits to Respondent based on \$0 wages from Employer.
6. From May 6, 2022, through November 17, 2022, Spouse received wages from [REDACTED]. (hereinafter, "Employer").
7. On October [REDACTED] 2022, Respondent reported on redetermination documentation that Spouse returned to employment with Employer.
8. On February [REDACTED], 2023, MDHHS calculated and established that Respondent received an overissuance (OI) of \$[REDACTED] in FAP benefits from April through October 2022 due to client error.
9. On March [REDACTED] 2023, MDHHS requested a hearing to establish a one-year FAP-related IPV disqualification period against Respondent.

CONCLUSIONS OF LAW

The FAP [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. MDHHS administers the FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. FAP policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

MDHHS requested a hearing to establish against Respondent a FAP-related IPV disqualification period of one year. Exhibit A, p. 1-2. MDHHS may request hearings to establish an IPV disqualification. BAM 600 (March 2021) p. 5. Claim Detail documentation verified that MDHHS established against Respondent a claim of \$[REDACTED] Exhibit A, p. 108. MDHHS requested a hearing to upgrade the cause of the claim from client error to IPV. An unsigned Intentional Program Violation Repayment Agreement alleged that Respondent committed an IPV by purposely failing to report Spouse's income from Employer. Exhibit A, pp. 112-114. More accurately, MDHHS alleged that Respondent purposely failed to report when household income exceeded simplified reporting (SR) income limits.

The types of recipient claims are those caused by agency error, unintentional recipient error, and IPV. 7 CFR 273.18(b). An IPV shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) Committed any act that constitutes a violation of Supplemental Nutrition Assistance Program (SNAP), SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards.¹ 7 CFR 273.16(c).

An IPV requires clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an IPV. 7 CFR 273.16(e)(6). An evidentiary standard of clear and convincing is “the most demanding standard applied in civil cases.” *In re Martin*, 450 Mich 204, 226-227; 538 NW2d 399 (1995). Clear and convincing evidence must be strong enough to cause a clear and firm belief that the proposition is true; it is more than proving that the proposition is probably true. M Civ JI 8.01. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

State agencies may establish a simplified reporting (SR) system. 7 CFR 273.12(a)(5). A household subject to SR responsibilities must report when its monthly gross income exceeds the monthly gross income limit for the benefit group size, as defined at § 273.9(a)(1). 7 CFR 273.12(a)(1)(H)(v). The SR income limit is 130% of the federal poverty level. *Id.*

MDHHS employs SR income limits. SR groups are required to report only when the group's actual gross monthly income exceeds the income limit for their group size. BAM 200 (January 2017) p. 1. No other change reporting is required. *Id.* The benefit group has 10 days to report that monthly income exceeded SR income limits.

A FAP approval notice sent to Respondent on May ■■■ 2022, stated that Respondent was a simplified reporter for a benefit group of six.² Exhibit A, pp. 23-29. As the grantee of a six-person SR-FAP group in May 2022, Respondent was required to report to MDHHS when gross household income exceeded \$3,855. RFT 250 (October 2021) p. 1.

Respondent's application dated November 29, 2021, reported that Spouse was recently laid-off by Employer. Exhibit A, pp. 10-17. MDHHS specifically alleged that Respondent failed to report when Spouse returned to employment with Employer placing the benefit group over the SR income limit.³

MDHHS presented documentation from Employer listing Spouse's wages. Exhibit A, pp. 25-29. The documentation listed wages for LTP from May 6, 2022, through November 17, 2022. May 6, 2022, through November 17, 2022. MDHHS additionally presented worksheets listing the household income from December 2021 through October 2022; the

¹ FAP is the Michigan equivalent of SNAP.

² Typically, simplified reporters receive ongoing employment income. Respondent's case is atypical as the notice listed \$0 wages being budgeted for Respondent's ongoing FAP eligibility.

³ Spouse actually did not return to employment until several months after the benefit group exceeded SR income limits in January 2022.

household income included unemployment benefits for Spouse, wages for Respondent, Supplemental Security Income for a child, and child support. Household income exceeded the SR income limit in January 2022. As a simplified reporter, Respondent should have reported to MDHHS that wages exceeded the SR income limit within 10 days after January 2022 (see BAM 200).

An IPV based on untimely reported income requires that unreported income caused an OI. Recipient claims not caused by trafficking are calculated by subtracting the correct FAP benefit amount from the actual issuance.⁴ CFR 273.18(c)(1). FAP-OI budgets from April through October 2022 demonstrated how an OI was calculated. Exhibit A, pp. 85-104. Actual FAP issuances totaling \$█████ were taken from documentation of Respondent's FAP issuance history. Exhibit A, pp. 82-84. Presumably, correct FAP benefits were calculated from the same group size, income, and expenses from original budgets other than including Spouse's wages from Employer.⁵ The FAP-OI budgets factored Spouse's wages as untimely reported resulting in a 20% credit for timely reported income not being applied. An untimely reporting of wages was consistent with comments by MDHHS staff which did not document a reporting of Spouse's wages or income exceeding SR income limits. Exhibit A, pp. 45-52. Using the procedures set forth in BEM 556 for calculating FAP eligibility, an OI of \$█████ was calculated.

The evidence established that Respondent received an OI of \$█████ in FAP benefits from April through October 2022 due to untimely reported employment income. For an IPV, MDHHS must clearly and convincingly establish that Respondent purposely failed to report income to receive an OI.

Respondent should have been aware of the responsibility to report income exceeding SR income limits. MDHHS mailed Respondent Notices of Case Action dated December █████ 2021, and March █████ 2022, advising Respondent to report to MDHHS within 10 days when gross monthly income exceeded the SR income limit. Exhibit A, pp. 23-29. MDHHS also documented on December █████ 2021, that reporting responsibilities were discussed with Respondent during an application interview. Exhibit A, pp. 18-22.

The inclusion of boilerplate reporting responsibilities within documents sent to Respondent does not clearly and convincingly establish that Respondent read, understood, and/or retained the language. The evidence also does not establish that Respondent purposely later ignored reporting responsibilities to receive an OI. Similarly, a discussion of reporting responsibilities during an interview does not establish that a client's failure to later report was purposeful.

A misreporting of misinformation is highly persuasive evidence of an intent consistent with an IPV. MDHHS did not allege a misreporting by Respondent.

⁴ Additionally, MDHHS is to subtract any benefits that were expunged (i.e., unused benefits which eventually expire from non-use). There was no evidence that any FAP benefits issued to Respondent were expunged.

⁵ Factoring gross income is compliant with employment income policy (see BEM 501) and factoring actual income is compliant with policy directing how to calculate an OI based on client error (see BAM 715) or an IPV (see BAM 720).

Given the evidence, Respondent might have purposely ignored the responsibility to report income, but this was not clearly and convincingly established. Thus, MDHHS did not establish an IPV by Respondent.

Individuals found to have committed a FAP-related IPV shall be ineligible to receive FAP benefits. 7 CFR 273.16(b). The standard disqualification period is used in all instances except when a court orders a different period. Standard IPV penalties are as follows: one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. *Id.* and BAM 720 (October 2017) p. 16.

MDHHS contended that a one-year FAP-related disqualification period was proper for Respondent's first IPV.⁶ Without a finding that Respondent committed an IPV, an IPV disqualification cannot follow. Therefore, MDHHS is denied its request to establish a one-year FAP-related IPV disqualification against Respondent.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish that Respondent committed an IPV stemming from FAP benefits over-issued from April through October 2022. The MDHHS request to establish a one-year FAP-related IPV disqualification against Respondent is **DENIED**.

CG/dm



Christian Gardocki

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:

⁶ Documentation of past FAP-related IPV's by Respondent listed none. Exhibit A, pp. 109-110.

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
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Respondent

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