



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: August 21, 2023
MOAHR Docket No.: 23-001563
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION TO ESTABLISH
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 16, 2023. MDHHS was represented by Isaac Slajus, regulation agent with the Office of Inspector General (OIG). Respondent did not participate despite being given at least 15 minutes from the scheduled hearing time to call.

ISSUE

The issue is whether MDHHS established by clear and convincing evidence 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 the following as material fact:

1. On May [REDACTED] 2021, Respondent applied for FAP benefits and reported no employment income.
2. From October 22, 2021, through April 22, 2022, Respondent received wages from [REDACTED] [REDACTED] (hereinafter, "Employer").
3. From December 2021 through April 2022, MDHHS issued to Respondent \$ [REDACTED] in FAP benefits based on \$0 income from Employer.

4. As of April 2022, Respondent had not reported to MDHHS income from Employer.
5. On December 14, 2022, MDHHS calculated and established that Respondent received an overissuance (OI) of \$[REDACTED] in FAP benefits from December 2021 through April 2022 due to unreported wages.
6. On March 20, 2023, MDHHS requested a hearing to establish against Respondent a one-year FAP-related IPV disqualification period stemming from over-issued FAP benefits from December 2021 through April 2022.

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. MDHHS may request hearings to establish an IPV disqualification. BAM 600 (March 2021) p. 5. Claim Search documentation listed an established claim of \$[REDACTED] against Respondent for FAP benefits over-issued from December 2021 through April 2022. Exhibit A, p. 29. MDHHS requested a hearing to upgrade the cause of the claim from client error to an IPV. An unsigned Intentional Program Violation Repayment Agreement alleged that Respondent committed an IPV by failing to report employment income. Exhibit A, pp. 41-42.

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

¹ FAP is the Michigan equivalent of SNAP.

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).

Federal regulations require change reporters to report income within 10 days after the income begins. 7 CFR 273.12(a)(2). Generally, change reporters are those without reported employment income during the benefit period.² MDHHS adopted the federal regulations in its policy. BAM 105 (January 2020) p. 7.

Respondent applied for FAP benefits on May [REDACTED] 2021 and reported no employment income. Exhibit A, pp. 8-15. There was no evidence that MDHHS budgeted employment income for any of Respondent's benefit group members from the application date through the end of the OI period. Given the evidence, Respondent was a change reporter, and therefore, obligated to report to MDHHS the start of employment income within 10 days.

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.³ CFR 273.18(c)(1). FAP-OI budgets from December 2021 through April 2022 demonstrated how an OI was calculated. Exhibit A, pp. 30-40. Actual FAP issuances totaling \$[REDACTED] were taken from documentation of Respondent's FAP issuance history. Exhibit A, pp. 27-29. Presumably, correct FAP benefits were calculated from the same group size, income, and expenses from original budgets other than including Respondent's actual gross income from Employer.⁴ TheWorkNumber documents listed wages to Respondent from October 22, 2021, through April 22, 2022. Exhibit A, pp. 16-19. The FAP-OI budgets factored Respondent's wages as untimely reported resulting in a 20% credit for timely reported income not being applied. An untimely reporting is consistent with comments on Respondent's case by MDHHS staff which did not document that Respondent timely reported income. Exhibit A, pp. 24-26. Using the procedures set forth in BEM 556 for calculating FAP eligibility, an OI of \$[REDACTED] was calculated.

The evidence established that Respondent received an OI of \$[REDACTED] in FAP benefits from December 2021 through April 2022 due to untimely reported wages. For an IPV, MDHHS must clearly and convincingly establish that Respondent purposely failed to report wages.

MDHHS alleged that Respondent should have been aware of the responsibility to report employment income to MDHHS within 10 days after receiving income from Employer on October [REDACTED] 2021. Applicants of FAP benefits receive an Information Booklet which includes boilerplate language of client rights and responsibilities including the responsibility to report income. BAM 110 (October 2022) p. 1.

² Simplified reporters, as opposed to change reporters, need only report when household income exceeds the simplified reporting income limit. Simplified reporters have employment income budgeted during the benefit period.

³ 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.

⁴ 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).

The inclusion of boilerplate reporting responsibilities within documents sent to Respondent, by itself, does not clearly and convincingly establish that Respondent read, understood, and/or retained the language. The evidence also does not clearly and convincingly establish that Respondent purposely later ignored reporting responsibilities to receive an OI of benefits.

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

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.⁵ Without a finding that Respondent committed an IPV, an IPV disqualification cannot follow. Thus, 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 December 2021 through April 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).

⁵ Documentation of past FAP-related IPVs by Respondent listed none. Exhibit A, pp. 43-44.

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-
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Via-First Class Mail :

Respondent

[REDACTED]
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