



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: October 5, 2023
MOAHR Docket No.: 23-002123
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

The Michigan Department of Health and Human Services (MDHHS or the Department) requested a hearing alleging that Respondent [REDACTED] [REDACTED] 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 September 5, 2023.

Adriane Laugavitz, Regulation Agent of the Office of Inspector General (OIG), represented MDHHS. Bethany Belill, Regulation Agent, was present as an observer.

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. From March 1, 2017 to July 31, 2017 (fraud period 1) Respondent received \$ [REDACTED] in FAP benefits. (Exhibit A, p. 147)

2. From July 1, 2018 to August 31, 2018 (fraud period 2) Respondent received \$ [REDACTED] in FAP benefits. (Exhibit A, p. 148)
3. On February [REDACTED] 2017 Respondent submitted an Assistance Application for FAP. Respondent reported no employment income. (Exhibit A, pp. 8-28)
4. On November [REDACTED], 2017 Respondent submitted an Assistance Application for FAP. Respondent reported no employment income. (Exhibit A, pp. 29-48)
5. On March [REDACTED] 2018 Respondent submitted an Assistance Application for FAP. Respondent reported no employment income. (Exhibit A, pp. 49-60)
6. On July [REDACTED] 2018 Respondent submitted an Assistance Application for FAP. Respondent reported no employment income. (Exhibit A, pp. 61-76)
7. On March [REDACTED] 2017 Respondent submitted a Redetermination and reported no employment income. (Exhibit A, pp. 77-84)
8. Respondent's signature on the Assistance Applications and Redetermination certified that he read and understood the rights and responsibilities. This would include providing accurate information and timely reporting changes. (Exhibit A, pp. 27, 48, 57, 62, 69, and 83; Regulation Agent Testimony)
9. On February [REDACTED] 2017 and April [REDACTED] 2017, Notices of Case Action was issued to Respondent approving FAP. The Notice included a budget summary showing no earned income was included. The Notice also reminded Respondent of the responsibility to report changes, including changes with income, within 10 days. A blank Change Report form was included. (Exhibit A, pp. 85-96)
10. On September [REDACTED] 2017, a Notice of Case Action was issued to Respondent decreasing the amount of the monthly FAP allotment. The Notice included a budget summary showing no earned income was included. The Notice also reminded Respondent of the responsibility to report changes, including changes with income, within 10 days. (Exhibit A, pp. 97-100)
11. On October [REDACTED] 2017, a Notice of Case Action was issued to Respondent canceling ongoing FAP due to not being able to locate the household and getting returned mail. The Notice also reminded Respondent of the responsibility to report changes, including changes with income, within 10 days. (Exhibit A, pp. 101-104)
12. On November [REDACTED] 2017, a Notice of Case Action was issued to Respondent approving FAP. The Notice included a budget summary showing no earned income was included. The Notice also reminded Respondent of the responsibility to report changes, including changes with income, within 10 days. A blank Change Report form was included. (Exhibit A, pp. 105-110)

13. Payroll records from [REDACTED] [REDACTED] document that Respondent had earnings during the fraud period. (Exhibit A, pp. 111-112)
14. A Verification of Employment and payroll records from [REDACTED] [REDACTED] [REDACTED] document that Respondent had earnings during the fraud period. (Exhibit A, pp. 113-116)
15. Verification and payroll documents from [REDACTED] [REDACTED] [REDACTED] [REDACTED] document that Respondent had earnings during the fraud period. (Exhibit A, pp. 117-146)
16. Respondent was aware of the responsibility to accurately and timely report household income to the Department. (Exhibit A, pp. 27, 48, 57, 62, 69, 83 and 85-110; Regulation Agent Testimony)
17. Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the change reporting requirements. (Exhibit A, pp. 18, 39 52, 64, and 78)
18. The FAP debt has been established by the Department¹. (Exhibit A, p. 162)
19. Respondent has no prior FAP IPV disqualifications. (Exhibit A, p. 1)
20. On April 12, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to timely report household income and as a result, received FAP benefits from March 1, 2017 to July 31, 2017 (fraud period 1) and July 1, 2018 to August 31, 2018 (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. (Exhibit A, pp. 1-170)
21. 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

¹ The Regulation Agent testified that based on the documented pay dates, the first fraud period should be changed to May 1, 2017 to July 31, 2017 and the overissuance amount from that timeframe should be changed to \$550.00. (Regulation Agent Testimony).

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 1, 2017), p. 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 a failure to report household income, resulting in receiving a greater amount of FAP benefits from May 1, 2017 to July 31, 2017 (amended fraud period 1) and July 1, 2018 to August 31, 2018 (fraud period 2) than Respondent was eligible to receive.

The Department has established that Respondent was aware of the responsibility to timely report changes to the Department, such as changes with income. Households must report a change in the source of income including starting or stopping a job or changing jobs; if the change in employment is accompanied by a change in income. 7 CFR 273.12(a)(1)(i)(B). Department policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. This includes changes with income. BAM 105 (October 1, 2016), pp. 11-13. Further, clients must completely and truthfully answer all questions on forms and in interviews. BAM 105, p. 9. Respondent's signature on the Assistance Applications and Redetermination certified that he read and understood the rights and responsibilities. This would include providing accurate information and timely reporting changes. (Exhibit A, pp. 27, 48, 57,

62, 69, and 83; Regulation Agent Testimony). The Notices of Case Action also reminded Respondent of the Reporting responsibilities. (Exhibit A, pp. 85-110). Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the change reporting requirements. (Exhibit A, pp. 18, 39 52, 64, and 78).

On February █ 2017 Respondent submitted an Assistance Application for FAP. Respondent reported no employment income. (Exhibit A, pp. 8-28). On November █ 2017 Respondent submitted an Assistance Application for FAP. Respondent reported no employment income. (Exhibit A, pp. 29-48). On March █ 2018 Respondent submitted an Assistance Application for FAP. Respondent reported no employment income. (Exhibit A, pp. 49-60). On July █ 2018 Respondent submitted an Assistance Application for FAP. Respondent reported no employment income. (Exhibit A, pp. 61-76). On March █ 2017 Respondent submitted a Redetermination and reported no employment income. (Exhibit A, pp. 77-84). The Notices of Case Action approving FAP benefits included budget summaries showing no earned income was included in the FAP budgets. (Exhibit A, pp. 85-100 and 105-110).

However, the Department received verifications showing that Respondent had income from employment during the fraud period. Payroll records from █ █ document that Respondent had earnings during the fraud period. (Exhibit A, pp. 111-112). A Verification of Employment and payroll records from █ █ █ document that Respondent had earnings during the fraud period. (Exhibit A, pp. 113-116). Verification and payroll documents from █ █ █ █ document that Respondent had earnings during the fraud period. (Exhibit A, pp. 117-146). There is no evidence that Respondent timely reported the employment income to the Department. The Department determined that the failure to timely report the household income resulted in an OI of FAP benefits. (Exhibit A, pp. 149-161).

The evidence establishes that Respondent failed to timely report household income to the Department within 10 days, as required by policy. The verified income from employment was utilized to re-determine FAP eligibility during the fraud period. Respondent's failure to timely and accurately report the income resulted in an OI 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. Respondent has no prior FAP IPV disqualifications. (Exhibit A, p. 1). Because this was Respondent's first IPV for FAP, Respondent is subject to a 12-month disqualification from receipt of FAP benefits.

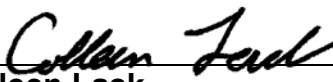
DECISION AND ORDER

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.
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.

CL/dm



Colleen Lack
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**

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Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

Respondent

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