



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]
[REDACTED]

Date Mailed: September 20, 2023
MOAHR Docket No.: 23-002568
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 18, 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?
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. On February █ 2021, the Department received Respondent's completed Redetermination listing herself and two children as group members.
2. On February █ 2021, the Department and Respondent completed a Redetermination interview during which Respondent agreed to FAP rights and responsibilities including the obligation to report changes in circumstances to the Department within ten days.
3. On February █ 2022 the Department received Respondent's completed Redetermination listing herself and two children as group members.
4. On September █ 2022, Respondent was incarcerated at the Baird Detention Facility in Detroit, Michigan.
5. On January █ 2023, Respondent was transferred to the Michigan Department of Corrections Huron Valley Complex with an earliest release date of September 7, 2029.
6. From November 2022 through December 2022, Respondent received \$█ in FAP benefits for a three-person group.
7. Respondent does not have an apparent physical or mental impairment that would limit the understanding or ability to accurately report changes in circumstances.
8. Respondent has no prior FAP IPV disqualifications.
9. On May 4, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally concealed her incarceration and as a result received FAP benefits from November 2022 through December 2022 (fraud period) that Respondent was ineligible to receive. OIG requested that Respondent repay overissued FAP benefits in the amount of \$█ for the period November 2022 through December 2022 and be disqualified from receiving FAP benefits for a period of 12 months due to committing an IPV.
10. 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, the Department alleges that Respondent committed an IPV of FAP because she failed to report her incarceration. Clients must report changes in circumstance to the Department within 10 days of the change itself including their address. BAM 105 (April 2022), p. 12; 7 CFR 273.12(a)(2). Residents of institutions are not eligible for FAP benefits unless one of the following is true: the facility is authorized by the Food and Nutrition Service (FNS) to accept FAP benefits or the facility is an eligible group living facility as defined by BEM 615. BEM 212 (October 2020), p. 8; 7 CFR 273.1(b)(7). Jails, prisons, juvenile detentions, and secure short-term detentions are not eligible living

facilities. BEM 615 (October 2021), p. 1; 7 CFR 273.1(b)(7). A person is a resident of an institution when the institution provides the majority of his meals as part of its normal services. BEM 212, p. 8. Jail, prison, juvenile detention, and secure short-term detention are included in the definition of an institution. BEM 265 (April 2018), p. 1.

Respondent was incarcerated effective September █ 2022. At the time of the hearing, she was still incarcerated. During the period of her incarceration, Respondent did not report her incarceration to the Department as required. However, the Department has not shown that Respondent was able to report her incarceration given that instruments for communication are heavily regulated in jails and prisons. No evidence was presented that the Department accepts collect calls from jails and prisons. No evidence was presented that Respondent had access to postage stamps to mail a letter to the Department. Therefore, despite Respondent's failure to report her incarceration, the Department has **not** established by clear and convincing evidence that Respondent committed an intentional program violation by failing to report it.

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. 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), p. 6.

In this case, the Department alleged that Respondent was issued FAP benefits in the amount of \$█ from November 2022 through December 2022 while incarcerated and that she was not entitled to any of these benefits. A review of Respondent's Benefit Summary Inquiry presented by the Department supports benefits issued in the amount alleged. Further review of policy under BEM 212, BEM 265, and BEM 615 support the Department's assertion that Respondent was not eligible for any benefits while incarcerated.

As a result of Respondent's incarceration, Respondent was ineligible for FAP benefits. The Department is entitled to recoup benefits issued to Respondent in the amount of \$█ from Respondent, which is the difference between the amount of FAP benefits actually issued to her and the amount she was eligible to receive during the fraud period.

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 period of disqualification from FAP.
3. Respondent received an OI of FAP benefits in the amount of \$ [REDACTED]

IT IS ORDERED that MDHHS initiate recoupment and/or collection procedures in accordance with MDHHS policy for a FAP OI in the amount of \$ [REDACTED] less any amounts already recouped/collected for the fraud period.

IT IS FURTHER ORDERED that Respondent is **not** subject to a period of disqualification from FAP.



Amanda M. T. Marler
Administrative Law Judge

AM/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

