



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: September 20, 2023
MOAHR Docket No.: 23-002620
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [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.

Brent Brown, 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 January [REDACTED] 2020, the Department received Respondent's application for FAP benefits indicating that she was working 24 hours per week at \$[REDACTED] per hour for

██████ ██████████ (Employer 1). Respondent's signature on the application acknowledges her understanding of the obligation to report changes in circumstances to the Department within ten days.

2. On January ██████ 2020, Respondent and the Department completed an application interview during which she again disclosed her employment income from Employer 1 and she agreed to program rights and responsibilities.
3. On August ██████ 2020, Respondent reported that she left her job with Employer 1 to start a new job ██████████ ██████████ (Employer 2) but also noted that work with Employer 2 had ended.
4. On October ██████ 2020, the Department issued a Notice of Case Action to Respondent advising her that she was eligible for FAP benefits based upon \$0.00 earned income and advised her to report changes in household gross income greater than the \$2,353.00.
5. On October ██████ 2020, Respondent returned to work with Employer 1.
6. On October ██████ 2020, Respondent received her first paycheck upon returning to work and she continued to be employed through at least May of 2022.
7. On November ██████ 2020, the Department received Respondent's completed Redetermination on which she added Unemployment Compensation Benefit (UCB) income and changed her address but failed to disclose her return to work with Employer 1.
8. On December ██████ 2020, the Department issued a Notice of Case Action to Respondent advising her that she was eligible for FAP benefits based upon \$0.00 earned income and reminded her to report changes in circumstances to the Department within ten days. A change report was provided with the Notice of Case Action to facilitate the reporting of any future changes.
9. On May 6, 2021, the Department learned of Respondent's income via a Wage Match showing unreported income from Employer 1 for Respondent.
10. From November 2020 through May 2021, Respondent received ██████████ in FAP benefits for a three-person group based upon \$0.00 income.
11. On June 21, 2022, the Department established a debt for overissued FAP benefits in the amount of \$██████████ for the period November 2020 through May 2021 based upon Respondent's failure to report employment income.
12. Respondent does not have an apparent physical or mental impairment that would limit the understanding or ability to accurately report changes in household circumstances to the Department.

13. Respondent has no prior FAP IPV disqualifications.
14. On May 10, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally concealed and misrepresented her employment income and as a result received FAP benefits from November 2020 through May 2021 (fraud period) 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.
15. A notice of hearing was mailed to Respondent at the last known address and was no 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 understand or fulfill these reporting responsibilities. BAM 720, p. 1.

In this case, MDHHS alleges that Respondent committed an IPV based on her failure to report household earned income. Earned and unearned income received by the client are considered in the calculation of a client's FAP eligibility and amount of benefits. BEM 500 (July 2020); BEM 556 (February 2021), pp. 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 (July 2020), p. 12; 7 CFR 273.10(b)(1)(i). Simplified reporters are only required to report when the group's actual gross monthly income (not converted) exceeds the simplified reporting limit for their group size. BAM 200 (January 2021), p. 1; 7 CFR 273.10(b)(1)(i). The simplified reporting limit is equal to the gross income limit for the group size. BAM 200, p. 2. For a group size of three, the simplified reporting limit was \$2,353.00. RFT 250 (October 2020), p. 1.

Respondent was advised of her responsibility to report changes in household income via the Application dated January [REDACTED] 2020, the interview dated January [REDACTED] 2020, and the Notice of Case Action dated December [REDACTED] 2020. She demonstrated her understanding of her obligation to report changes in circumstances when she reported the end of employment with two different employers. Respondent was also advised that she needed to report income greater than the simplified reporting limit via the Notice of Case Action dated October [REDACTED] 2020. This same Notice of Case Action also advised Respondent that her FAP benefit eligibility was determined based upon \$0.00 in earned income.

Despite being informed of the obligation to report changes or income greater than the simplified reporting limit, Respondent did not report her return to work with Employer 1 when her income exceeded the limit in November 2020 or December 2020. She also misrepresented her circumstances on her December 2020 Redetermination and then failed to inform the Department of the change when she received a Notice of Case Action on December [REDACTED] 2020 showing that her benefits were based upon \$0.00 earned income. Respondent continued to receive employment income well into 2022. As a result, the Department issued FAP benefits to Respondent based upon \$0.00 in earned income and the Department established a debt for overissued FAP benefits in the amount of \$[REDACTED] for the period November 2020 through May 2021. The only reason that the Department became aware of Respondent's income was via a Wage Match. The Department routinely matches recipient employment data with the Talent Investment Agency (TIA) and Unemployment Insurance through computer data exchanges. BAM 802 (July 2018), p. 1. The Department submits social security numbers to the UIA quarterly to be cross-matched with the work history records submitted by Michigan employers. *Id.* The information is compared to the client's gross earnings in Bridges. Wage Match Client Notices are issued to clarify any discrepancy. BAM 802, p. 2.

Given the proximity in time from the October 2020 Notice of Case Action to the date Respondent received her first paycheck from employment, her misrepresentation on the Redetermination, and then continuing to receive benefits based upon \$0.00 income after the Notice of Case Action in December 2020, the Department has met its burden of proof in establishing that Respondent intentionally concealed and misrepresented her employment income and 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 no evidence of prior IPV's by Respondent. This was Respondent's first IPV for FAP; Respondent is subject to a 12-month disqualification from receipt of benefits.

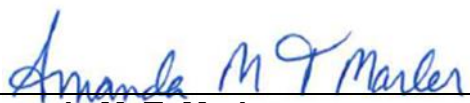
DECISION AND ORDER

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

AM/dm



Amanda M. T. Marler
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
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BSC4HearingDecisions

MOAHR

Via-First Class Mail :

Respondent

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