



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: November 3, 2023
MOAHR Docket No.: 23-002904
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 October 3, 2023.

William Etienne, 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. From August 1, 2019 to February 28, 2020, Respondent received \$ [REDACTED] in FAP benefits. (Exhibit A, pp. 63-65)
2. On June [REDACTED] 2019, Respondent submitted a Renew Benefits for her FAP case. Respondent reported no changes with the household members and that the household income was from her sometimes babysitting but nothing regular. (Exhibit A, pp. 12-14)
3. A Verification Letter of Birth documented that [REDACTED] (JG) was the father of Respondent's child, year of birth 2018. (Exhibit A, p. 15)
4. On August [REDACTED] 2019, Respondent applied for FAP and health care coverage for herself and her daughter. Respondent reported her address was [REDACTED] [REDACTED] [REDACTED] in [REDACTED] MI. It was reported that there were no other household members and there was no household income. (Exhibit A, pp. 16-22)
5. On August [REDACTED] 2019 an interview was completed with Respondent. Respondent reported that there was no one else living at the address, there was no income other than the father of her child paying all bills and buying the child diapers and food range between \$600.00-\$700.00 per month. The rights and responsibilities were reviewed with Respondent. (Exhibit A, pp. 23-24)
6. On August [REDACTED] 2019, a Notice of Case Action was issued to Respondent approving FAP for the household of two, Respondent and her daughter. A budget summary was included showing no income was included in the FAP budget. The Notice reminded Respondent of the responsibility to report changes, including changes with the number of persons residing in the home and income. A blank Change Report form was included. (Exhibit A, pp. 25-32).
7. On February [REDACTED] 2020, Respondent submitted an application for State Emergency Relief (SER). Respondent reported her address was [REDACTED] [REDACTED] in [REDACTED] MI. Respondent reported the only household members were herself and her daughter. Respondent reported income from her employment at [REDACTED] [REDACTED] (Exhibit A, pp. 33-37)
8. On February [REDACTED] 2020, Respondent applied for FAP for herself and her daughter. Respondent reported her address was [REDACTED] [REDACTED] [REDACTED] in [REDACTED] MI. It was reported that there were no other household members. Respondent reported income from her employment at [REDACTED] [REDACTED] (Exhibit A, pp. 38-43)

9. On September █ 2019, Respondent submitted a Renew Benefits for her FAP case and on October 4, 2019 and interview was completed. Respondent reported no changes with the household members and that the household income was from her occasionally babysitting but nothing consistent. (Exhibit A, pp. 44-46)
10. On January █ 2020, Respondent submitted a Renew Benefits for her FAP case and interview was completed. Respondent reported no changes with the household members and that the household income was from her babysitting and cleaning, \$█-\$█ per week. (Exhibit A, pp. 47-48)
11. On February █ 2020 an interview was completed with Respondent. Respondent reported her address was █ █, MI. It was reported that Respondent lives with her daughter and the father of the child stays in the home 3 nights per week; the remaining time he is in hotels for his job; they do not purchase and prepare food together; he uses Respondent's address as mailing address and the home is his. Employment for the father of the child was reported. The rights and responsibilities were reviewed with Respondent. (Exhibit A, pp. 49-51)
12. On April █ 2020, JG applied for health care coverage for himself and reported his address as █ █ in █ MI. No other household members were reported. It was also reported that he was laid off from work due to COVID 19. (Exhibit A, pp. 52-56)
13. Secretary of State records show both Respondent and JG utilized the █ █ in █ MI for their state identification/licenses as of February █ 2019. (Exhibit A, pp. 57-58)
14. A report from The Work Number documented JG's employment with █ █ starting June 4, 2018 through May 18, 2021. JG reported his address as █ █ █ MI for this employment. JG's earnings were documented. (Exhibit A, pp. 59-62)
15. Respondent's signature on the assistance applications certified that the information she provided was accurate and that she read and understood the rights and responsibilities, which would include providing accurate information and timely reporting any changes. (Exhibit A, pp. 22, 37, and 43; Regulation Agent Testimony)
16. Respondent was aware of the responsibility to accurately report information and to timely report any changes. (Exhibit A, pp. 22, 24, 29-32, 37, 43 and 50-51; Regulation Agent Testimony)
17. Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the reporting requirements. (Exhibit A, pp. 19, 41, and 66)
18. Respondent has no prior FAP IPV disqualifications. (Exhibit A, p. 2)

19. On May 26, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to report a mandatory group member and his income to the Department and as a result, received FAP benefits from August 1, 2019 to February 28, 2020 (fraud period) that Respondent was ineligible to receive. OIG requested that (i) Respondent repay \$1,745.00 to MDHHS for FAP benefits that Respondent was ineligible to receive and (ii) Respondent be disqualified from receiving FAP benefits for a period of 12 months due to committing an IPV. (Exhibit A, pp. 1-134)
20. 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 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 Respondent intentionally failing to report a mandatory group member and his income to the Department, resulting in receiving FAP benefits from August 1, 2019 to February 28, 2020, (fraud period) that Respondent was ineligible to receive.

The Department has established that Respondent was aware of the responsibilities to accurately report information and to timely report any changes to the Department. Department policy requires clients to completely and truthfully answer all questions on forms and in interview. BAM 105 (November 1, 2019) p. 9. Households must also report all changes in household composition, such as the addition or loss of a household member, as well as changes in residence and the resulting change in shelter costs. 7 CFR 273.12(a)(1)(ii) and 7 CFR 273.12(a)(1)(iii) Department policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within 10 days. This includes changes with household composition and residence. BAM 105, pp. 11-13. Respondent’s signature on the Assistance Applications certified that the information she provided was accurate and that she read and understood the rights and responsibilities, which would include providing accurate information and timely reporting any changes. The rights and responsibilities were reviewed with Respondent during the interviews. The Notice of Case Action reminded Respondent of the reporting responsibilities. (Exhibit A, pp. 22, 24, 29-32, 37, 43 and 50-51; Regulation Agent Testimony). Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the reporting requirements. (Exhibit A, pp. 19, 41, and 66).

A Verification Letter of Birth documented that JG was the father of Respondent’s child, year of birth 2018. (Exhibit A, p. 15).

On June █ 2019, Respondent submitted a Renew Benefits for her FAP case. Respondent reported no changes with the household members and that the household income was from her sometimes babysitting but nothing regular. (Exhibit A, pp. 12-14).

On August █ 2019, Respondent applied for FAP and health care coverage for herself and her daughter. Respondent reported her address was 1 █ █, MI. It was reported that there were no other household members and there was no household income. (Exhibit A, pp. 16-22).

On August █ 2019 an interview was completed with Respondent. Respondent reported that there was no one else living at the address, there was no income other than the father of her child paying all bills and buying the child diapers and food range between \$600.00-\$700.00 per month. (Exhibit A, pp. 23-24).

On August █ 2019, a Notice of Case Action was issued to Respondent approving FAP for the household of two, Respondent and her daughter. A budget summary was included showing no income was included in the FAP budget. (Exhibit A, pp. 25-32).

On February █ 2020, Respondent submitted an application for SER. Respondent reported her address was █ █, MI. Respondent reported the only household members were herself and her daughter. Respondent reported income from her employment at █. (Exhibit A, pp. 33-37).

On February █ 2020, Respondent applied for FAP for herself and her daughter. Respondent reported her address was █ █ in █ MI. It was reported that there were no other household members. Respondent reported income from her employment at █ █ (Exhibit A, pp. 38-43).

On September █ 2019, Respondent submitted a Renew Benefits for her FAP case and on October █ 2019 and interview was completed. Respondent reported no changes with the household members and that the household income was from her occasionally babysitting but nothing consistent. (Exhibit A, pp. 44-46).

On January █ 2020, Respondent submitted a Renew Benefits for her FAP case and interview was completed. Respondent reported no changes with the household members and that the household income was from her babysitting and cleaning, \$█ - \$█ per week. (Exhibit A, pp. 47-48).

On February █ 2020 an interview was completed with Respondent. Respondent reported her address was █ █, MI. It was reported that Respondent lives with her daughter and the father of the child stays in the home 3 nights per week; the remaining time he is in hotels for his job; they do not purchase and prepare food together; he uses Respondent's address as mailing address and the home is his. Employment for the father of the child was reported. (Exhibit A, pp. 49-51).

However, the evidence shows that JG was also a household member during the fraud period. Secretary of State records show both Respondent and JG utilized the █ █ MI for their state identification/licenses as of February █ 2019. (Exhibit A, pp. 57-58). A report from The Work Number documented JG's employment with █ starting June 4, 2018 through May 18, 2021. JG reported his address as █ █ MI for this employment. JG's earnings were documented. (Exhibit A, pp. 59-62). On April █ 2020, JG applied for health care coverage for himself and reported his address as █ █, MI. No other household members were reported. It was also reported that he was laid off from work due to COVID 19. (Exhibit A, pp. 52-56).

The evidence shows that Respondent did not accurately and timely report the household composition when she was receiving FAP benefits, as required per policy. JG, as the father of the child, was a mandatory group member, and his income should have been included in

the FAP budgets. Respondent's failure to accurately and timely report the household composition 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. 2). Because this was Respondent's first IPV for FAP, Respondent is subject to a 12-month disqualification from receipt of FAP benefits.

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 1, 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 1, 2017), p. 6; BAM 705 (October 1, 2018), p. 6.

In this case, MDHHS alleged that Respondent was overissued FAP benefits totaling \$[REDACTED] during the fraud period. From August 1, 2019 to February 28, 2020, Respondent received \$[REDACTED] in FAP benefits. (Exhibit A, pp. 63-65). When the corrected household composition and income was utilized to redetermine eligibility for FAP, Respondent's household was only eligible for \$[REDACTED] in FAP benefits during the fraud period. (Exhibit A, pp. 5, 73-86, and 131). Therefore, MDHHS is entitled to repayment from Respondent of \$1,745.00 in overissued FAP benefits for the fraud period.

DECISION AND ORDER

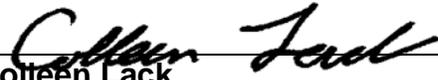
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. MDHHS has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent is subject to a 12-month disqualification from FAP.
3. Respondent did receive 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 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**

DHHS
Pam Farnsworth
Monroe County DHHS
**MDHHS-Monroe-
Hearings@michigan.gov**

Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

Respondent

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