



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 9, 2023  
MOAHR Docket No.: 23-003160  
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 11, 2023.

Jonathan Edwards, 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 November 1, 2021 to November 30, 2021 (fraud period 1) Respondent received \$ [REDACTED] in FAP benefits subject to recoupment. (Exhibit A, p. 82)
2. From May 1, 2022 to May 31, 2022 (fraud period 2) Respondent received \$ [REDACTED] in FAP benefits subject to recoupment. (Exhibit A, p. 103)
3. From July 1, 2023 to July 31, 2023 (fraud period 3) Respondent received \$ [REDACTED] in FAP benefits subject to recoupment. (Exhibit A, p. 103)
4. On November [REDACTED] 2021, Respondent submitted an Assistance Application for FAP and other benefits for her children. Respondent reported no employment income. (Exhibit A, pp. 11-18)
5. Respondent's signature on the Assistance Application certified that she read and understood the rights and responsibilities. This would include providing accurate information and timely reporting changes. (Exhibit A, pp. 18-63)
6. On December [REDACTED] 2021, an interview was completed with Respondent. Respondent reported no monthly source of income. The rights and responsibilities were reviewed with Respondent. (Exhibit A, pp. 67-69)
7. On December [REDACTED] 2021, a Notice of Case Action was issued approving FAP for the household of four. A budget summary was included showing no earned income was included in the FAP budget. The Notice 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. 70-77)
8. On February [REDACTED] 2022, a Simplified Six Month Review was issued to Respondent explaining the Semi-Annual Contact Report for the simplified reporting process. (Exhibit A, pp. 78-79)
9. A report from The Work Number showed income for Respondent from employment with BSRE Weekly Payroll with an original hire date of September 12, 2019. Respondent's earnings were documented. (Exhibit A, pp. 64-66)
10. Respondent was aware of the responsibility to accurately and timely report household income to the Department at application and as a change reporter. (Exhibit A, pp. 18-63, 69, and 74-77)
11. The Respondent was not aware of the responsibility to report when household income exceeded the simplified reporting limit.

12. 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. 15, 68, and 117)
13. Respondent has no prior FAP IPV disqualifications. (Exhibit A, p. 116)
14. On June 6, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to accurately and timely report household income and as a result, received FAP benefits from November 1, 2021 to November 30, 2021 (fraud period 1); May 1, 2022 to May 31, 2022 (fraud period 2); and July 1, 2023 to July 31, 2023 (fraud period 3) that Respondent was ineligible to receive. OIG requested that (i) Respondent repay \$██████ 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. 1-120)
15. 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 a failure to accurately and timely report household income, resulting in receiving a greater amount of FAP benefits from November 1, 2021 to November 30, 2021 (fraud period 1); May 1, 2022 to May 31, 2022 (fraud period 2); and July 1, 2023 to July 31, 2023 (fraud period 3) than Respondent was eligible to receive.

Department policy requires clients to completely and truthfully answer all questions on forms and in interview. BAM 105 (July 1, 2020) p. 9. For change reporters, 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 (April 1, 2022), pp. 11-13. Similarly, the federal regulations require that 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).

FAP simplified reporting households must report when the household monthly income exceeds the monthly gross income limit for its household size. 7 CFR 273.12(a)(5)(ii)(G)(1) Further, periodic reports are to be submitted on which it is requested that the household report any changes in circumstances. 7 CFR 273.12(a)(5)(iii) Similarly, Department policy regarding change reporting for FAP simplified reporting household indicates that simplified reporting groups are required to report only when the group’s actual gross monthly income (not converted) exceeds the Simplified Reporting (SR) income limit for their group size. If the group has an increase in income, the group must determine their total gross income at the end of that month. If the total gross income exceeds the group’s SR income limit, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. BAM 200, January 1, 2021, p. 1. Simplified reporting households must also complete the Simplified Six Month Review form. Groups meeting the simplified reporting category at application and redetermination are assigned a 12-month benefit period and are required to have a semi-annual contact. BAM 200, pp. 2-3.

The Department has established that Respondent was aware of the responsibility to accurately and timely report household income at application and as a change reporter. Respondent’s signature on the Assistance Application certified that she read and

understood the rights and responsibilities. This would include providing accurate information and timely reporting changes. The rights and responsibilities were also discussed during the interview. The Notice of Case Action reminded Respondent of the responsibility to report changes. (Exhibit A, pp. 18-63, 69, and 74-77). 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. 15, 68, and 117).

However, the available evidence does not establish that Respondent was properly notified of her responsibility as a simplified reporter to report when the household income exceeded the applicable simplified reporting limit for her group size. Specifically, the available evidence did not contain a copy of a Notice of Case Action, or other documentation, specifying the applicable simplified reporting limit and explaining the requirement to determine the household's total gross income at the end of the month and when to report if the total gross income exceeds the limit. The only documentation included showing Respondent was given any information regarding the simplified reporting process just addressed the Semi-Annual Contact Report portion of the simplified reporting process. (Exhibit A, pp. 78-79). Accordingly, it cannot be found that Respondent intentionally failed to report when the household income exceeded the simplified reporting limit.

On November █ 2021, Respondent submitted an Assistance Application for FAP and other benefits for her children. Respondent reported no employment income. (Exhibit A, pp. 11-18). On December █ 2021, an interview was completed with Respondent. Respondent reported no monthly source of income. (Exhibit A, pp. 67-69). On December █ 2021, a Notice of Case Action was issued approving FAP for the household of four. A budget summary was included showing no earned income was included in the FAP budget. (Exhibit A, pp. 70-74).

However, a report from The Work Number showed income for Respondent from employment with BSRE Weekly Payroll with an original hire date of September 12, 2019. Respondent's earnings through the fraud periods were documented. Respondent received paychecks November 3, 2021 and November 10, 2021 with total gross earnings totaling \$█ Respondent also received weekly paychecks from April 13, 2022 through June 1, 2022 and July 6, 2022 through August 3, 2022. (Exhibit A, pp. 64-66).

The evidence establishes that Respondent falsely reported no one in the household had been employed in the last 30 days on the November █ 2021 application. (Exhibit A, p. 17). The Department determined that the failure to accurately report the household income at application resulted in an OI of FAP benefits from November 1, 2021 to November 30, 2021 (fraud period 1). (Exhibit A, pp. 94 and 96-99). 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. 116). 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 November 1, 2021 to November 30, 2021 (fraud period 1) Respondent received \$[REDACTED] in FAP benefits subject to recoupment. (Exhibit A, p. 82). From May 1, 2022 to May 31, 2022 (fraud period 2) Respondent received \$[REDACTED] in FAP benefits subject to recoupment. (Exhibit A, p. 103). From July 1, 2023 to July 31, 2023 (fraud period 3) Respondent received \$[REDACTED] in FAP benefits subject to recoupment. (Exhibit A, p. 103). When the verified income was utilized to re-determine FAP eligibility, Respondent was not eligible to receive FAP benefits during the fraud periods. Therefore, MDHHS is entitled to repayment from Respondent of \$[REDACTED] in overissued 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.
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**  
Corlette Brown  
Wayne-District 31 (Grandmont)  
**MDHHS-Wayne-31-Grandmont-  
Hearings@Michigan.gov**

**Policy-Recoupment**

**StebbinsN**

**MOAHR**

**Via-First Class Mail :**

**Respondent**

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