



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: December 21, 2023
MOAHR Docket No.: 23-004449
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 November 16, 2023.

Dory Bryant, 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. From July 1, 2019 to December 31, 2019 (fraud period 1) Respondent received \$[REDACTED] in FAP benefits. (Exhibit A, p. 64)
2. From December 1, 2020 to December 31, 2020 (fraud period 2) Respondent received \$[REDACTED] in FAP benefits. (Exhibit A, p. 63)
3. On June [REDACTED] 2019, Respondent submitted a Semi-Annual Contact Report and reported that the household monthly gross earned income had not changed by more than \$100.00 from \$[REDACTED] (Exhibit A, pp. 11-13)
4. On July [REDACTED] 2019, a Notice of Case Action was issued to Respondent approving FAP for the household of two. A budget summary was included showing \$[REDACTED] of earned income was included in the FAP budget. (Exhibit A, pp. 14-18)
5. The July [REDACTED] 2019, Notice of Case Action reminded Respondent of the responsibility to report changes. Specifically, Respondent was a simplified reporter and was only required to report when the household gross monthly income exceeded \$1,784.00. A change in income over this amount was to be reported by the 10th day of the following month. (Exhibit A, p. 15)
6. On December [REDACTED] 2019, Respondent submitted a Redetermination and reported that she had income from work, but she did not fill in the fields addressing how much she earns. (Exhibit A, pp. 22-28)
7. During a January [REDACTED] 2020 interview, Respondent reported employment with Heartland. The rights and responsibilities were also explained. (Exhibit A, p. 110)
8. On August [REDACTED] 2020, Respondent submitted an Assistance Application and reported income from her daughter's employment with [REDACTED] [REDACTED] [REDACTED] 30 hours per week, \$[REDACTED] per hour. Respondent also reported she has been on medical leave and has not had any income since March 10, 2020. (Exhibit A, pp. 29-36)
9. During an August [REDACTED] 2020 interview, Respondent reported no income in the home at that time. Respondent's daughter had been fired August 4, 2020. The rights and responsibilities were also reviewed with Respondent. (Exhibit A, pp. 37-38)
10. On September [REDACTED] 2020, Respondent submitted an Assistance Application and reported no income from employment. (Exhibit A, pp. 39-44)
11. Respondent's signature on the Assistance Applications certified that she was aware of the rights and responsibilities. This would include providing accurate information and timely reporting changes. (Exhibit A, pp. 36, and 44; Regulation Agent Testimony)
12. On September [REDACTED] 2020, a Notice of Case Action was issued to Respondent approving FAP for the household of three. 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. (Exhibit A, pp. 45-49)

13. On November █ 2020, a Notice of Case Action was issued to Respondent approving FAP for the household of two. 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. (Exhibit A, pp. 50-54)
14. On August █ 2021, A Wage Match Client Notice was submitted to the Department documenting Respondent's employment with █ that began December █ 2016. (Exhibit A, pp. 60-62)
15. Employment verification documented Respondent's earnings from employment with █ █ █ from December 13, 2016 through January 4, 2022. This included paychecks Respondent received from May 28, 2019 to March 17, 2020 as well as September 29, 2020 to February 16, 2021. (Exhibit A, pp. 55-59)
16. Respondent was aware of the responsibility to report when household income exceeded the simplified reporting limit. (Exhibit A, p. 15)
17. Respondent was aware of the responsibilities to provide accurate information and to timely report changes. (Exhibit A, pp. 28, 36, 38, 44, 49, and 54)
18. 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. 22, 33, 42, and 113)
19. The FAP debts have been established by the Department and Respondent was provided due process. (Exhibit A, pp. 1 and 106-7)
20. Respondent has no prior FAP IPV disqualifications. (Exhibit A, p. 112)
21. On July 28, 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 July 1, 2019 to December 31, 2019 (fraud period 1) and December 1, 2020 to December 31, 2020 (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. 1-118)
22. 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 July 1, 2019 to December 31, 2019 (fraud period 1) and December 1, 2020 to December 31, 2020 (fraud period 2) than Respondent was eligible to receive.

Department policy requires clients to completely and truthfully answer all questions on forms and in interview. BAM 105 (January 1, 2019) 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, 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, 2017, 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 when completing forms, as a change reporter, and as a simplified reporter. Respondent's signature on the Assistance Applications certified that she was aware of the rights and responsibilities. This would include providing accurate information and timely reporting changes. (Exhibit A, pp. 36, and 44; Regulation Agent Testimony). The rights and responsibilities were also discussed during the interviews. (Exhibit A, pp. 37-38 and 110). The July ■■■ 2019, Notice of Case Action reminded Respondent of the responsibility to report changes. Specifically, Respondent was a simplified reporter and was only required to report when the household gross monthly income exceeded \$■■■■■. A change in income over this amount was to be reported by the 10th day of the following month. (Exhibit A, p. 15).

The September ■■■ 2020 and November ■■■ 2020 Notices of Case Action issued to Respondent reminded Respondent of the responsibility to report changes, including changes with income. (Exhibit A, pp. 45-54). 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. 22, 33, 42, and 113).

On June ■■■ 2019, Respondent submitted a Semi-Annual Contact Report and reported that the household monthly gross earned income had not changed by more than \$100.00 from \$■■■■■ (Exhibit A, pp. 11-13). On July ■■■ 2019, a Notice of Case Action was issued to Respondent approving FAP for the household of two. A budget summary was included showing \$■■■■■ of earned income was included in the FAP budget. (Exhibit A, pp. 14-18). The July ■■■ 2019, Notice of Case Action reminded Respondent of the responsibility to report changes. Specifically, Respondent was a simplified reporter and

was only required to report when the household gross monthly income exceeded \$1,784.00. A change in income over this amount was to be reported by the 10th day of the following month. (Exhibit A, p. 15).

On December █ 2019, Respondent submitted a Redetermination and reported that she had income from work, but she did not fill in the fields addressing how much she earns. (Exhibit A, pp. 22-28). During a January █ 2020 interview, Respondent reported employment with █. The rights and responsibilities were also explained. (Exhibit A, p. 110).

On August █ 2020, Respondent submitted an Assistance Application and reported income from her daughter's employment with █, 30 hours per week, \$█ per hour. Respondent also reported she has been on medical leave and has not had any income since March 10, 2020. (Exhibit A, pp. 29-36). During an August 7, 2020 interview, Respondent reported no income in the home at that time. Respondent's daughter had been fired August 4, 2020. (Exhibit A, pp. 37-38).

On September █ 2020, Respondent submitted an Assistance Application and reported no income from employment. (Exhibit A, pp. 39-44). On September █ 2020, a Notice of Case Action was issued to Respondent approving FAP for the household of three. 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. (Exhibit A, pp. 45-49).

On November █ 2020, a Notice of Case Action was issued to Respondent approving FAP for the household of two. 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. (Exhibit A, pp. 50-54).

On August █ 2021, A Wage Match Client Notice was submitted to the Department documenting Respondent's employment with █ that began December 2, 2016. (Exhibit A, pp. 60-62). Employment verification documented Respondent's earnings from employment with █ from December 13, 2016 through January 4, 2022. This included paychecks Respondent received from May 28, 2019 to March 17, 2020 as well as September 29, 2020 to February 16, 2021. (Exhibit A, pp. 55-59).

The evidence establishes that Respondent failed to accurately and timely report household income to the Department. The Department determined that the failure to accurately and timely report the household income resulted in an OI of FAP benefits from July 1, 2019 to December 31, 2019 (fraud period 1) and December 1, 2020 to December 31, 2020 (fraud period 2). (Exhibit A, pp. 76-93). 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. 123). Because this was Respondent's first IPV for FAP, Respondent is subject to a 12-month disqualification from receipt of FAP benefits.

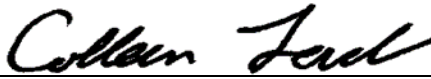
DECISION AND ORDER

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**

DHHS
Chelsea McCune
Macomb County DHHS Warren Dist.
**MDHHS-Macomb-20-
Hearings@michigan.gov**

Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

Respondent
[REDACTED]
[REDACTED]
[REDACTED]