



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
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EXECUTIVE DIRECTOR

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Date Mailed: May 30, 2024
MOAHR Docket No.: 23-006322
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Linda Jordan

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

The Michigan Department of Health and Human Services (MDHHS or Department) requested a hearing alleging that Respondent ██████████ 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 May 1, 2024. Karrie Felenchak, 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). MDHHS' Hearing Packet was admitted at the hearing as MDHHS Exhibit A, pp. 1-86.

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 FAP benefits?

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 ██████████ 2018, Respondent applied for FAP, reporting no income (Exhibit A, pp. 9-14). Respondent signed the application electronically (Exhibit A, p. 9).
2. On ██████████ 2019, Respondent submitted a FAP renewal, reporting no income (Exhibit A, pp. 60-62).

3. On or about ██████ 2019, Respondent began working at ██████ (Employer), receiving his first paycheck on ██████, 2019 (Exhibit A, p. 73).
4. On May 31, 2019, MDHHS completed an eligibility interview with Respondent and Respondent reported no income (Exhibit A, p. 64).
5. On May 31, 2019, MDHHS sent Respondent a Notice of Case Action, indicating that he was approved for FAP benefits for a household of one, beginning June 1, 2019 (Exhibit A, p. 65). Respondent's FAP benefit rate was based on no income (Exhibit A, p. 66).
6. From August 1, 2019 to November 30, 2019, Respondent received \$772.00 in FAP benefits for a one-person FAP group.
7. Respondent was aware of the responsibility to report truthful and accurate information regarding his circumstances.
8. No evidence was presented that Respondent had an apparent physical or mental impairment that would limit the understanding or ability to accurately report truthful information regarding his circumstances.
9. Respondent has no prior FAP IPV disqualifications.
10. On September 18, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to report earned income and as a result received FAP benefits from August 1, 2019 to November 30, 2019 (alleged 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. MDHHS previously established the associated FAP overissuance (OI) after affording Respondent due process (Exhibit A, p. 86). The FAP OI amount was not at issue in this case.
11. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Service 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 client has had at least two client errors previously, or the alleged fraud is committed by a state government employee. BAM 720 (October 1017), p. 5.

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 alleged that Respondent committed an IPV based on failing to report his employment at Employer timely and misrepresenting his employment status to MDHHS during the eligibility interview. Clients must cooperate with the local office in determining initial and ongoing eligibility. BAM 105 (January 2018), p. 9. Cooperation includes completely and truthfully answering all questions on forms and in interviews. *Id.* Clients must also report changes in circumstances that may affect eligibility for program benefits within ten days of receiving the first payment reflecting the change. *Id.*, pp. 11-12. Regarding income, clients are required to report starting or stopping employment, changes in rate of pay and changes in hours worked. *Id.*

MDHHS presented evidence that Respondent began working at Employer in [REDACTED] 2019 and received his first paycheck on [REDACTED] 2019 (Exhibit A, p. 73). Also on May 31, 2019, MDHHS conducted an eligibility interview with Respondent in which he reported no income. The record shows that Respondent's job at Employer had already begun when he spoke with an MDHHS representative by telephone. Thus, Respondent made a false statement regarding his employment status. No evidence was presented that Respondent attempted to report this income to MDHHS prior to or during the alleged fraud period.

Respondent's misrepresentation and failure to properly report his income to MDHHS in a timely manner led to an OI of FAP benefits. MDHHS informed Respondent of his responsibility to provide truthful and accurate information regarding household income. No evidence was presented that Respondent had an impairment which would have prevented him from understanding his rights and responsibilities.

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. There was no evidence of prior IPV's by Respondent. Because this was Respondent's first IPV for FAP, Respondent is subject to a 12-month disqualification from the 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 2018), p. 1. MDHHS previously established the associated FAP OI after affording Respondent due process. The FAP OI amount is not at issue in this case.

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.



Linda Jordan
Administrative Law Judge

LJ/pt

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
PO Box 30062
Lansing, MI 48909-7562
MDHHS-OIG-HEARINGS@michigan.gov

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Wayne-Greydale-DHHS
27260 Plymouth Rd
Redford, MI 48239
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Interested Parties
MDHHS OIG Hearings
Wayne County DHHS
Policy Recoupment
N Stebbins
MOAHR

Via-First Class Mail:

Respondent
[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]