



GRETCHEN WHITMER
GOVERNOR

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

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Date Mailed: May 29, 2024
MOAHR Docket No.: 23-006393
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. Adriane Laugavitz, 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 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 July 29, 2022, Respondent applied for FAP benefits on behalf of herself, ██████████ (Spouse) and a minor child (Exhibit A, pp. 7-8). Respondent reported that Spouse was working at ██████████ (Employer 1) (Exhibit A, p. 10). Respondent signed the application electronically (Exhibit A, p. 12).

2. On or about August 20, 2022, Spouse began working at [REDACTED] (Employer 2), receiving his first paycheck on [REDACTED] 2022 (Exhibit A, p. 23). Spouse continued working at [REDACTED] until at least [REDACTED], 2023 (Exhibit A, p. 23).
3. On August 30, 2022, MDHHS sent Respondent a Notice of Case Action, indicating that she was approved for FAP benefits for a group of three, beginning August 8, 2022 (Exhibit A, p. 14). The FAP benefit rate was based on \$2,878.00 in earned income and the notice informed Respondent that her household was in the Simplified Reporting (SR) category (Exhibit A, p. 15). The notice indicated that Respondent was only responsible for reporting changes when her household income exceeded the SR limit of \$2,379.00 (Exhibit A, p. 15).
4. On [REDACTED] 2022, Respondent submitted a Semi-Annual Contact Report to MDHHS (Exhibit A, p. 19). The report indicated that \$2,879.00 was used to calculate her FAP benefit rate (Exhibit A, p. 20). Respondent reported that the household's monthly income had not changed by more than \$125.00 and that no one in the household had experienced a change in employment (Exhibit A, p. 20).
5. From November 1, 2022 to December 31, 2022, Respondent received \$1,480.00 in FAP benefits for a three-person FAP group.
6. Respondent was aware of the responsibility to report truthful and accurate information regarding her circumstances.
7. No evidence was presented that Respondent had an apparent physical or mental impairment that would limit the understanding or ability to accurately report household circumstances.
8. Respondent has no prior FAP IPV disqualifications.
9. On October 2, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to report income exceeding the SR limit and as a result received FAP benefits from November 1, 2022 to December 31, 2022 (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 a FAP overissuance (OI) (Exhibit A, p. 34). The FAP OI amount was not at issue in this case.
10. 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 2017), 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 understand or fulfill these reporting responsibilities. BAM 720, p. 1.

In this case, MDHHS alleged that Respondent committed an IPV based on her failure to report when the household exceeded the SR limit. Additionally, MDHHS alleged that Respondent misrepresented her circumstances by failing to report a change in household income on the Semi-Annual Contact Report.

Respondent's FAP group was in the simplified reporting (SR) category. Food assistance groups with countable earnings are assigned to the SR category. BAM 200 (April 2022), p. 1. SR groups are required to report only when the group's actual gross monthly

income (not converted) exceeds the SR income limit for their group size. *Id.* No other change reporting is required. *Id.* If the group has an increase in income, the group must determine their total gross income at the end of that month. *Id.* 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. *Id.* Once assigned to SR, the group remains in SR throughout the current benefit period unless they report changes at their semi-annual contact or redetermination that make them ineligible for SR. *Id.*

Here, MDHHS informed Respondent that the SR limit was \$2,379.00 for her household and instructed that if the household experience an increase in income, she must determine whether the household's gross monthly income exceeded the limit (Exhibit A, pp. 15-16). However, the notice also indicated that the household's earned income was \$2,878.00, which already exceeded the SR limit. The reason for the discrepancy was not adequately explained at the hearing. Given that the household income already exceeded the SR limit, MDHHS created confusion regarding Respondent's reporting responsibilities. To sustain an IPV for inaccurate reporting, MDHHS must clearly and correctly instruct clients on their reporting responsibilities. BAM 720, p. 1. It did not demonstrate that it did so here, and thus, it cannot sustain an IPV on the failure to report exceeding the SR limit.

MDHHS also alleged that Respondent misrepresented her income on the Semi-Annual Contact Report. However, Respondent submitted the report on December 16, 2022. Taking change reporting procedures into account, the information given on the Semi-Annual Contact Report could not have affected the group's FAP benefit rate during the alleged fraud period, which was from November 1, 2022 to December 31, 2022, and is therefore not relevant to the present case.

Accordingly, MDHHS has not 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 FAP benefits 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 not established by clear and convincing evidence that Respondent has committed an IPV. Therefore, Respondent is not subject to a FAP disqualification.

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 was 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 not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent is not subject to a 12-month disqualification from FAP.

IT IS ORDERED that MDHHS' request to disqualify Respondent from FAP is **DENIED**.



LJ/pt

Linda Jordan
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

