

2. On or about September 20, 2020, Respondent resumed working at [REDACTED] (Employer), receiving a paycheck on [REDACTED], 2020 (Exhibit A, p. 33).
3. On October 6, 2020, MDHHS sent Respondent a Notice of Case Action indicating that she was approved for FAP for a household of three, beginning October 1, 2020 (Exhibit A, p. 15). The FAP benefit rate was based on no earned income (Exhibit A, p. 16). The notice included boilerplate language advising that FAP beneficiaries have a responsibility to report changes to MDHHS within ten days (Exhibit A, p. 19).
4. From February 1, 2021, to July 31, 2021, Respondent received \$3,696.00 in FAP benefits for a three-person FAP group.
5. Respondent was aware of the responsibility to report truthful and accurate information regarding her circumstances.
6. No evidence was presented that Respondent had an apparent physical or mental impairment that would limit the understanding or ability to accurately report eligibility information.
7. Respondent has no prior FAP IPV disqualifications.
8. On October 5, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to report earned income as required and as a result received FAP benefits from February 1, 2021, to July 31, 2021 (alleged fraud period) that Respondent was ineligible to receive. OIG requested that (i) Respondent repay \$2,860.00 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.
9. 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 two or more client errors previously, 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 accurately report her earned income to MDHHS in a timely manner. Clients are required to report changes in circumstances that may affect eligibility within ten days of receiving the first payment reflecting the change. BAM 105 (January 2018), pp. 11-12.

MDHHS presented documentation to show that Respondent resumed working at Employer in September 2020, receiving a paycheck on September 25, 2020 (Exhibit A, p. 46). Respondent received a paycheck from Employer after submitting the FAP application, but before MDHHS sent the Notice of Case Action. No evidence was presented to show that Respondent reported this income or attempted to report this income to MDHHS. To show that Respondent committed an IPV, MDHHS introduced Respondent's FAP application and asserted that by signing the application, Respondent acknowledged her responsibility to report changes in income to MDHHS within ten days. Additionally, MDHHS presented the Notice of Case Action, which included language indicating that FAP beneficiaries have a responsibility to report changes that may affect eligibility status. MDHHS also asserted that the budget on the Notice of Case Action informed Respondent that no earned income was being budgeted, which was inaccurate at the time that the notice was sent.

At the hearing, Respondent credibly testified that she did not intend to misrepresent her circumstances and that she believed that when she returned to work, MDHHS would be

notified through an automated system. Although this was a mistaken belief, the record shows that Respondent did act with the requisite intent to support an IPV.

Based on a review of the complete record, the evidence presented is insufficient to conclude that Respondent intentionally withheld or misrepresented information for the purpose of maintaining, increasing or preventing reduction of program benefits. Therefore, MDHHS has not satisfied its burden of presenting 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 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. 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.

In this case, MDHHS alleged that Respondent was overissued FAP benefits totaling \$2,860.00 during the alleged fraud period. Although there was insufficient evidence to find an IPV, the record shows that Respondent's income was not properly reported due to a client error. MDHHS is required to pursue FAP OIs in the event of client error. See *generally* BAM 715 (October 2017). The record shows that Respondent received \$3,696.00 in FAP benefits for a three-person FAP group during that time. MDHHS introduced budgets which recalculated the group's FAP benefit rate after adding Respondent's unreported income (Exhibit A, pp. 40-49), and concluded that Respondent was not eligible for any FAP benefits during the alleged fraud period due to excess income. MDHHS also introduced a Benefit Summary Inquiry, which demonstrated the amounts that the FAP group received in terms of the ongoing FAP benefit rate and supplemental benefits issued during the COVID-19 Public Health Emergency (Exhibit A, pp. 35-38).

Due to the COVID-19 pandemic, the federal government authorized the State of Michigan to issue Emergency Allotments (EA) to all FAP households, meaning that FAP households not receiving the maximum benefit for their group size would receive a supplement to bring their benefit amount to the maximum for their group size. ESA Memo 2020-15 (March 2020; updated December 2020). The State of Michigan issued EA from April 2020 to February 2023. ESA Memo 2023-10 (February 2023). In addition, beginning in May 2021, MDHHS began issuing a minimum \$95 supplement to all FAP households, including households that were already receiving the maximum allotment for their household size. ESA Memo 2021-22 (May 2021). Wrongfully issued EA are

recoupable by MDHHS if the FAP household is not eligible for any FAP benefits during the month at issue.

From January 1, 2021, to September 30, 2021, FAP recipients became eligible for a 15% benefit increase in addition to their monthly allotment and the EA, pursuant to the 2021 Consolidated Appropriations Act, P.L. 116-260 (Appropriations Act), and extended by the American Rescue Plan, P.L. 117-2. Under Section 702(b)(4) of the Appropriations Act, the 15% benefit increase is not subject to recoupment. When requesting recoupment of FAP benefits from January 1, 2021, to September 30, 2021, MDHHS is required to explain how it calculated the OI amount, less the 15% benefit increase.

The record shows that Respondent was not eligible for any FAP benefits during the alleged fraud period, and MDHHS properly excluded the 15% benefit increase from the OI amount. Therefore, MDHHS is entitled to repayment from Respondent of \$2,860.00 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 not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent is not subject to a 12-month disqualification from FAP.
3. Respondent did receive an OI of FAP benefits in the amount of \$2,860.00.

IT IS ORDERED that MDHHS initiate recoupment and/or collection procedures in accordance with MDHHS policy for a FAP OI in the amount of \$2,860.00, less any amounts already recouped/collected for the fraud period.

IT IS FURTHER ORDERED that MDHHS' request to disqualify Respondent from FAP for a period of 12 months 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

Via-Electronic Mail:

Petitioner

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PO Box 30062
Lansing, MI 48909-7562
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Interested Parties

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