

reported an address in [REDACTED] Michigan (Exhibit A, pp. 10-12). Respondent signed the application electronically (Exhibit A, p. 16).

2. On [REDACTED] 2022, [REDACTED] (Mother) signed a statement, which alleged that she was the mother of Minor Children, that they lived with her and that they never lived with Respondent (Exhibit A, 62).
3. On [REDACTED] 2022, an administrative assistant from The [REDACTED] of [REDACTED] verified that Minor Children were enrolled at the school from [REDACTED] 2019, to present, that the parent listed was Mother, and that their address was in [REDACTED] Michigan (Exhibit A, p. 63).
4. From September 1, 2021, to August 31, 2022, Respondent received \$8,899.00 in FAP benefits for a four-person FAP group.
5. Respondent was aware of the responsibility to report truthful and accurate information regarding his 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 information regarding his circumstances.
7. Respondent has no prior FAP IPV disqualifications.
8. On October 6, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally misrepresented his household size and as a result received FAP benefits from September 1, 2021, to August 31, 2022 (alleged fraud period) that Respondent was ineligible to receive. OIG requested that (i) Respondent repay \$3,476.00 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 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 misrepresenting his household size at the time of application.

Group composition for FAP is determined by who lives together, the relationships of the people who live together, and whether the people living together purchase and prepare food together. BEM 212 (October 2020), p. 1. Parents and children under age 22 who live together must be in the same FAP group. *Id.* The primary caretaker of a child is the person who is primarily responsible for the day-to-day care of the child and supervision in the home where the child sleeps more than half of the days in a calendar month, on average, in a twelve-month period. BEM 212, p. 2. When a child spends time with multiple caretakers who do not live together, MDHHS must determine who is the primary caretaker. BEM 212, p. 3. The child is always in the FAP group with the primary caretaker. *Id.* To determine who the primary caretaker of the child is, MDHHS must determine where the Minor Child sleeps the majority of the time. BEM 212, p. 4. When the primary caretaker is disputed or questionable, MDHHS must seek verification from both caretakers. *Id.*

To support its allegation, MDHHS introduced Respondent's FAP application, in which Respondent indicated that the Minor Children were living in his household. MDHHS also introduced a signed statement from Minor Children's mother stating that Minor Children lived with her and that they had never lived with Respondent (Exhibit A, p. 62). MDHHS introduced a letter from Minor Children's school that stated that the parent listed was

Mother and that the address listed for the Minor Children was in [REDACTED] (Exhibit A, p. 63). Respondent reported an address in [REDACTED] Michigan (Exhibit A, p. 10).

Although this information raises questions regarding Respondent's household size, MDHHS did not present sufficient evidence to determine which parent was the primary caretaker. MDHHS did not introduce evidence regarding the physical and legal custody arrangement of the Minor Children and/or what the parenting time schedule was. In order to determine who the primary caretaker is for the purposes of FAP, MDHHS must determine how many overnights the children spend with each parent. When the primary caretaker is disputed or questionable, MDHHS must seek verification from both caretakers. BEM 212, p. 4. MDHHS failed to establish that it attempted to properly verify who the primary caretaker was in this case.

Additionally, Mother's statement was too vague to establish the specifics of the parenting time arrangement. She stated that Minor Children lived with her since they were born and that they never lived with their father (Exhibit A, p. 62). The statement does not speak directly to the number of overnights Minor Children spent with each parent. The letter from Minor Children's school suffers from the same deficiency. Without additional evidence regarding the custody arrangement between the parties, it is not possible to determine who the Minor Children's primary caretaker was for the purposes of FAP, nor is it possible to determine whether Respondent misrepresented his household size.

Therefore, 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 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 not established by clear and convincing evidence that Respondent committed an IPV. Therefore, Respondent is not subject to a 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 2018), p. 1. MDHHS alleged that Respondent was overissued \$3,476.00 in FAP benefits during the alleged fraud period because he misrepresented his household size on the FAP application by claiming that Minor Children lived with him, when the Minor Children were actually living with their mother. However, as described above, MDHHS failed to present sufficient evidence regarding the number of overnights that the Minor Children spent at each parent's house. Thus, MDHHS has not demonstrated by clear and convincing evidence that Respondent was overissued benefits, and MDHHS is not entitled to repayment from Respondent of \$3,476.00 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. MDHHS did not establish that Respondent received an OI of FAP benefits in the amount of \$3,476.00.

IT IS ORDERED that MDHHS delete the \$3,476.00 OI in its entirety and cease any recoupment/collection action.

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

