



GRETCHEN WHITMER  
GOVERNOR

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

MARLON I. BROWN, DPA  
DIRECTOR

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

Date Mailed: June 13, 2024  
MOAHR Docket No.: 23-006830  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Linda Jordan**

### **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] 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 14, 2024. Jonathan Edwards, 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?
3. Did Respondent receive an overissuance (OI) of FAP benefits that MDHHS is entitled to recoup and/or collect as a recipient claim?

### **FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Respondent was an ongoing recipient of FAP benefits.

2. On [REDACTED], 2022, Respondent submitted a renewal for FAP benefits (Exhibit A, pp. 9-10). Respondent reported no income (Exhibit A, p. 9). Respondent signed the renewal electronically (Exhibit A, p. 10).
3. On March 2, 2022, MDHHS sent Respondent a Notice of Case Action indicating that she was approved for FAP benefits for a household of one, beginning April 1, 2022 (Exhibit A, p. 56). The FAP benefit rate was based on no earned income (Exhibit A, p. 57). The Notice of Case Action included boilerplate language advising that FAP beneficiaries have a responsibility to report changes in income to MDHHS within ten days (Exhibit A, p. 60).
4. On or about March 27, 2022, Respondent began working at [REDACTED] (Employer), receiving her first paycheck on [REDACTED], 2022 (Exhibit A, pp. 65-65). Respondent continued working at Employer until at least April 23, 2023 (Exhibit A, p. 65).
5. From June 1, 2022, to January 1, 2023, Respondent received \$2,884.00 in FAP benefits for a one-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 information regarding his circumstances.
8. Respondent has no prior FAP IPV disqualifications.
9. On October 6, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to report earned income and as a result received FAP benefits from June 1, 2022, to January 1, 2023 (alleged fraud period) that Respondent was ineligible to receive. OIG requested that (i) Respondent repay \$2,884.00 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.
10. 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 understanding 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 earned income from Employer within ten days. 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 (October 2021), pp. 11-12.

MDHHS presented documentation to show that Respondent received her first paycheck from Employer on April 1, 2022 (Exhibit A, p. 65). No evidence was presented to show that Respondent reported this income or attempted to report this income to MDHHS. To demonstrate that Respondent committed an IPV, MDHHS introduced Respondent's FAP renewal and Notice of Case Action, which contained language advising Respondent of the responsibility to report changes to MDHHS within ten days. These documents show that MDHHS notified Respondent of her reporting responsibilities, however, they are insufficient to prove by clear and convincing evidence that Respondent intentionally withheld information from MDHHS. Notably, the FAP renewal

and Notice of Case Action predate Respondent's income at Employer and MDHHS did not allege that Respondent made a false statement to MDHHS about her income on any form or in any interview. Without more, these documents do not show that Respondent acted with the requisite intent to sustain 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 (OI)**

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 \$2,884.00 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).

MDHHS asserted that Respondent was not eligible for any FAP benefits during the alleged fraud period due to excess income from Employer. In order to determine whether Respondent was eligible for FAP, MDHHS is required to recalculate Respondent's FAP benefit rate after adding the unreported income. However, no OI budgets were submitted as evidence. Without this information, it is not possible to determine whether MDHHS properly calculated the OI amount. Therefore, MDHHS has not demonstrated that it is entitled to repayment from Respondent of \$2,884.00 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 has not established that Respondent received an OI of FAP benefits in the amount of \$2,884.00.

**IT IS ORDERED** that MDHHS delete the \$2,884.00 OI in its entirety and cease any recoupment/collection action.

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



LJ/pt

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**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

