



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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DIRECTOR

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Date Mailed: June 21, 2024
MOAHR Docket No.: 23-007047
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 23, 2024. Derrick Gentry, Regulation Agent of the Office of Inspector General (OIG), represented MDHHS. Respondent appeared and represented herself. MDHHS' Hearing Packet was admitted at the hearing as MDHHS Exhibit A, pp. 1-80.

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. Respondent was an ongoing recipient of FAP benefits.
2. On or about February 22, 2016, Respondent began working at ██████████ (Employer) (Exhibit A, p. 31). Respondent continued working at Employer until at least August 3, 2018 (Exhibit A, p. 31).

3. On November 20, 2017, Respondent submitted a FAP Redetermination (Exhibit A, p. 12). Respondent reported earned income from [REDACTED] (Exhibit A, p. 16). Respondent signed the Redetermination, asserting the information was true and accurate to the best of her knowledge (Exhibit A, p. 18).
4. On December 6, 2017, MDHHS sent Respondent a Notice of Case Action indicating that she was approved for FAP benefits for a household size of four, beginning January 1, 2018 (Exhibit A, p. 34). The FAP budget was based on \$386.00 per month in earned income (Exhibit A, p. 16). The notice indicated that the household was in the Simplified Reporting (SR) category and stated that the only change that the household was required to report for FAP was if income exceeded the income limit for a household size of five, which was \$2,665.00 (Exhibit A, p. 35).
5. From March 1, 2018 to June 30, 2018, Respondent received \$2,560.00 in FAP benefits for a four-person FAP group.
6. Respondent was aware of the responsibility to report truthful and accurate information regarding household 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 household circumstances.
8. Respondent has no prior FAP IPV disqualifications.
9. On October 10, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to report earned income and exceeding the SR limit and as a result received FAP benefits from March 1, 2018 to June 30, 2018 (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. The associated overissuance amount was previously established by MDHHS after affording Respondent due process. The overissuance amount is 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 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 failing to report employment at Employer and failing to report exceeding the SR income limit. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (October 2017), p. 9.

The record shows that Respondent's FAP group reported earned income and was in the Simplified Reporting (SR) category. SR groups are FAP households with countable earnings who are only required to report changes in income when the group's actual gross monthly income exceeds the income limit for their group-size. BAM 200 (January 2017), p. 1. No other change reporting is required. *Id.* If the client group experiences an increase in income, the group must calculate their total gross income at the end of the month, and if the gross income exceeds the group's SR income limit, they must report the change to MDHHS by the tenth day of the following month. *Id.*; RFT 250. Once designated as a SR group, the group remains an SR group throughout the current benefit period unless they report changes that would make them ineligible for SR. BAM 200, p. 1.

Here, MDHHS argued that Petitioner committed an IPV because she failed to disclose her income from Employer when she submitted the FAP redetermination. MDHHS presented evidence that Petitioner received income from Employer in November 2017, the same month that she submitted the FAP redetermination and did not disclose the income. Additionally, MDHHS alleged that Petitioner failed to report exceeding the SR limit, which led to an overissuance of FAP benefits.

At the hearing, Petitioner credibly testified that she was not working at Employer during that time period because she was using leave under the Family and Medical Leave Act (FMLA) to help her son who was facing mental health issues. Petitioner testified that she sent MDHHS paystubs regarding her employment information and was attempting to comply with the reporting requirements. She further testified that if she did not properly comply with the reporting requirements, it was not intentional, and that her family was going through a difficult period at that time.

Based on the complete record, including Respondent's testimony, MDHHS has not established that Respondent acted with the requisite intent to sustain an IPV. 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 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.

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 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

OIG

PO Box 30062

Lansing, MI 48909-7562

MDHHS-OIG-HEARINGS@michigan.gov

DHHS

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MDHHS-Wayne-31-Grandmont-Hearings@Michigan.gov

Interested Parties

Wayne County DHHS

Policy Recoupment

N. Stebbins

MOAHR

Via-First Class Mail:

Respondent

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