



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: July 31, 2023
MOAHR Docket No.: 23-000705
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Danielle Nuccio

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

The Michigan Department of Health and Human Services (MDHHS or the Department) requested a hearing alleging that Respondent Jean Eskelson 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 July 17, 2023. Joseph Gregurek, 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 benefits for FAP?

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 for a group size of one.
2. On March [REDACTED] 2020, MDHHS received a redetermination of FAP benefits from Respondent, in which she reported that she receives income from Retirement, Survivors, and Disability Insurance (RSDI). Respondent verified that she understood

that she can view her rights and responsibilities as a benefit recipient (Exhibit A, pp. 10-25).

3. On March █ 2021, MDHHS received a Mid-Certification Contact Notice from Respondent, in which she reported that her job at █ started and ended in March. Respondent verified that she understood that she can view her rights and responsibilities as a benefit recipient (Exhibit A, pp. 26-28).
4. On April █ 2021, Respondent began employment at █ (Employer), receiving her first paycheck on May 7, 2021. Respondent's employment ended on January 28, 2022 (Exhibit A, pp. 32-37).
5. From July 1, 2021 through January 31, 2022, Respondent received \$█ in FAP benefits for a one-person FAP group (Exhibit A, pp. 41-42).
6. Respondent does not have an apparent physical or mental impairment that would limit the understanding or ability to accurately report employment or household income.
7. Respondent has no prior FAP IPV disqualifications.
8. On February 8, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to report earned income from employment and as a result received FAP benefits from July 1, 2021 through January 31, 2022 (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. OIG stated that the FAP overissuance amount, which exceeded \$500, was previously established and is not at issue in this case.
9. 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 (IPV):

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), pp. 12-13.

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 alleges that Respondent committed an IPV based on intentionally failing to report employment income with the intention to fraudulently maintain or prevent reduction in her FAP benefits. Earned income received by the client is considered in the calculation of a client's FAP eligibility and amount of benefits. BEM 500 (July 2020); BEM 556 (February 2021), pp. 2-3; 7 CFR 273.9(a). FAP recipients who are not simplified reporters are required to report starting or stopping employment and changes in circumstance that potentially affect eligibility or benefit amount within ten days of receiving the first payment reflecting the change. BAM 105 (July 2020), p. 12; 7 CFR 273.10(b)(1)(i). MDHHS then has ten days to process the change and, if it results in a decrease in benefits, it gives the client 12 days before the negative action impacts the benefits issued. BAM 220 (January 2021), pp. 7, 12.

Here, Respondent was an ongoing recipient of FAP. MDHHS presented a March ■ 2020 redetermination of benefits and March ■ 2021 mid-certification contact report, stating that Respondent acknowledged her responsibilities as a benefit recipient, including to timely report changes in income. On April 9, 2021, Respondent began to work for Employer, receiving her first paycheck on May 7, 2021. Respondent worked for Employer until January 28, 2022. Respondent did not report this employment to MDHHS. While Respondent should have still reported this employment change and income, she did not misreport any information to MDHHS. Meaning, there was no written submission to MDHHS during the alleged fraud period in which Respondent failed to provide truthful information. A written misreporting of information is highly persuasive evidence of an intent to defraud consistent with an IPV. MDHHS did not present evidence of a written misreporting by Respondent. MDHHS also did not present evidence that they issued any

correspondence to Respondent during the alleged fraud period. MDHHS has failed to establish that Respondent intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing, or preventing reduction of program benefits or eligibility once she began working for Employer. To find Respondent committed an IPV, the requisite intent that she failed to report in order to fraudulently obtain benefits must be clearly and convincingly proven by MDHHS. Here, Respondent may have purposely ignored her responsibility to report with the intent to defraud, but MDHHS failed to establish that by clear and convincing evidence. Thus, MDHHS did not establish an IPV by Respondent.

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 period of disqualification from FAP.

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 OI amount was previously established by MDHHS and 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 Respondent is not disqualified from FAP.

DN/dm



Danielle Nuccio

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
**MDHHS-OIG-
HEARINGS@michigan.gov**

DHHS
Julian Castillo
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Policy-Recoupment

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MOAHR

BSC3HearingDecisions

Via-First Class Mail :

Respondent

[REDACTED]
[REDACTED]
[REDACTED]