



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 3, 2023
MOAHR Docket No.: 23-001385
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 Deidra Harris 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 31, 2023. Connor Render, 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 Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
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?

FINDINGS OF FACT

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

1. On August [REDACTED] 2018, Respondent submitted an application for assistance for FAP benefits for a three-person group. Prior to submission of the application, Respondent

must review rights and responsibilities as a benefit recipient, including reporting changes in income, to MDHHS. (Exhibit A, pp. 9-14).

2. On August [REDACTED] 2018, MDHHS issued a Notice of Case Action to Respondent, informing her that she was eligible for FAP benefits for a group size of three based upon \$0.00 earned income and reminding her of the obligation to report changes in household circumstances to MDHHS within ten days. A blank Change Report form was provided with the Notice of Case Action to facilitate the reporting of any future changes to MDHHS timely (Exhibit A, pp. 15-20).
3. On February 25, 2019, Respondent began working for the [REDACTED] [REDACTED] [REDACTED] [REDACTED] (Employer), receiving her first paycheck on March 13, 2019. Respondent's employment ended on July 3, 2019 (Exhibit A, pp. 21-23).
4. On May 31, 2019, Respondent reported to MDHHS that her employment will begin on June 14, 2019 (Exhibit A, p. 27).
5. From May 1, 2019 through June 30, 2019, Respondent received \$ [REDACTED] in FAP benefits for a three-person group (Exhibit A, p. 30).
6. Respondent does not have an apparent physical or mental impairment that would limit the understanding or ability to accurately report employment or income.
7. Respondent has one prior FAP IPV disqualification. Respondent was found to have committed a FAP IPV and was disqualified from FAP from September 1, 2012 through August 31, 2013 (Exhibit A, p. 45).
8. On March 1, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to report employment income and as a result was overissued FAP benefits from May 1, 2019 through June 30, 2019 (fraud period). OIG requested that:
 - a. Respondent repay \$ [REDACTED] to MDHHS for FAP benefits that she was ineligible to receive;
 - b. Respondent be disqualified from receiving FAP benefits for a period of 24-months due to committing a second IPV.
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 understand or fulfill these reporting responsibilities. BAM 720, p. 1.

In this case, MDHHS alleges that Respondent committed an IPV of the FAP because she failed to timely report employment income to MDHHS. Earned income received by the client is considered in the calculation of a client's FAP eligibility and amount of benefits. BEM 500 (July 2017); BEM 556 (April 2018), 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 (January 2019), 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 (April 2019) pp. 7, 12. Additionally, FAP recipients are also expected to be truthful in all communications with MDHHS. BAM 105, p. 9.

In this case, Respondent applied for FAP on August [REDACTED] 2018. Prior to submitting the application, Respondent was required to review the rights and responsibilities as a benefit recipient, including the timely reporting of changes in income to MDHHS. On August [REDACTED] 2018, MDHHS issued a Notice of Case Action to Respondent, informing

her that she was eligible for FAP benefits based upon \$0.00 earned income and reminding her of the obligation to report changes in household circumstances to MDHHS within ten days. A blank Change Report form was provided with the Notice of Case Action to facilitate the reporting of any future changes to MDHHS timely. On February 25, 2019, Respondent began working for Employer. Respondent did not report this employment to MDHHS. On May 6, 2019, Respondent contacted MDHHS to report that her son had begun working but did not report her own employment and income to MDHHS. On May 31, 2019, Respondent contacted MDHHS to report that she would be starting employment on June 14, 2019. Given this blatant misrepresentation to MDHHS, and the continued receipt of benefits based upon \$0.00 reported earned income, MDHHS has shown by clear and convincing evidence that Respondent intentionally concealed her employment income for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP benefits.

Therefore, MDHHS has established by 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 established by clear and convincing evidence that Respondent committed an IPV. There was evidence of one prior FAP IPV by Respondent in which Respondent was disqualified from FAP from September 1, 2012 through August 31, 2013 (see Exhibit A, p. 45). Because this was Respondent's second IPV for FAP, Respondent is subject to a 24-month 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. 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; BAM 715 (October 2017), pp. 5-7.

MDHHS calculates the OI total for the fraud period by calculating what Respondent's FAP budget would have been if her earned income from employment would have been included in the budget. MDHHS determined what Respondent's monthly benefit amount should have been if earned income was included in her FAP budget by using the income information received from the Work Number database (see Exhibit A, pp. 21-23). MDHHS determined that had Respondent's income been included in her household budget, she would not have been eligible to receive FAP benefits. A review of Respondent's household income during the fraud period shows that, for each month, the household had income in excess of the gross income limit for FAP eligibility. Since Respondent was not eligible to receive FAP benefits, all benefits issued during this time

was overissued. Therefore, since Respondent was issued \$ [REDACTED] during the fraud period, MDHHS is entitled to recoup \$ [REDACTED] 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 established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent is subject to a 24-month disqualification from FAP.
3. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED]

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

IT IS FURTHER ORDERED that Respondent is personally disqualified from FAP for a period of 24 months.



Danielle Nuccio
Administrative Law Judge

DN/dm

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**
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Policy-Recoupment

StebbinsN

BSC4HearingDecisions

Via-First Class Mail :

MOAHR
Respondent

[REDACTED]
[REDACTED]
[REDACTED]