



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: September 20, 2023
MOAHR Docket No.: 23-002419
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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] [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 April 14, 2023.

James Linaras, 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. On February [REDACTED] 2022, the Department received Respondent's application for FAP benefits on which he indicated that he did not have any source of employment income.

2. On February █ 2022, the Department and Respondent completed an application interview during which Respondent's rights and responsibilities including the obligation to report any changes in household circumstances to the Department within ten days was discussed with him and to which he agreed. During the interview Respondent disclosed that he had completed an interview with █ █ (Employer).
3. On February █ 2022, the Department issued a Notice of Case Action to Respondent advising him that he was eligible for FAP benefits based upon \$0.00 income and reminded him of the obligation to report changes in circumstances to the Department within ten days. A copy of a Change Report was provided with the Notice of Case Action to facilitate the reporting of any future changes.
4. Equifax Employment Verification shows that Respondent began work with Employer on March █ 2022 and received his first paycheck on March █ 2022. He continued to work for Employer through at least the pay date September █ 2022.
5. Respondent failed to report his employment income.
6. The Department continued to issue FAP benefits to Respondent based upon \$0.00 income.
7. From May 2022 through September 2022, the Department issued \$█ to Respondent in FAP benefits.
8. On November 1, 2022, the Department established a debt for overissued FAP benefits in the amount of \$█ for the period May 2022 through September 2022 based upon Respondent's failure to report his income.
9. Respondent does not have an apparent physical or mental impairment that would limit the understanding or ability to accurately report changes in household income.
10. Respondent has no prior FAP IPV disqualifications.
11. On April 28, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally concealed his employment income and as a result received FAP benefits from May 2022 through September 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.
12. 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

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 his failure to report household earned income. Earned and unearned income received by the client are considered in the calculation of a client's FAP eligibility and amount of benefits. BEM 500 (April 2022); BEM 556 (October 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 (April 2022), pp. 11-12;

7 CFR 273.10(b)(1)(i). FAP recipients are also expected to be truthful in all communications with the Department. BAM 105, p. 9.

Respondent was advised of and acknowledged his responsibility to report changes in household income during his application interview on February [REDACTED] 2022. He was reminded of the obligation via the Notice of Case Action and accompanying Change Report form dated February [REDACTED] 2022. Despite acknowledgment and reminder of the obligation to report changes, Respondent began employment 11 days after the Notice of Case Action was issued. Respondent never reported his earned income. As a result, the Department continued to issue FAP benefits to Respondent based upon \$0.00 earned income. On November 1, 2022, the Department established a debt for overissued FAP benefits in the amount of \$ [REDACTED] for the period May 2022 through September 2022. Given the proximity in time from Respondent's application, the Notice of Case Action, and the start of his employment, the Department has met its burden of proof in establishing that Respondent intentionally concealed his employment income and 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 no evidence of prior IPV's by Respondent. This was Respondent's first IPV for FAP; Respondent is subject to a 12-month disqualification from receipt of 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 12-month disqualification from FAP.

AM/dm



Amanda M. T. Marler
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**

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Corlette Brown
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Policy-Recoupment

StebbinsN

MOAHR

BSC4HearingDecisions

Via-First Class Mail :

Respondent

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