



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]
[REDACTED]

Date Mailed: September 20, 2023
MOAHR Docket No.: 23-002447
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 September 14, 2023.

Gretchen Heinrich, 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).

On the morning of the hearing before it started, Agent Heinrich spoke with Respondent but after advising him of the issues in the hearing and nature of the exhibit packet, his phone disconnected or he hung up, and she was unable to reach him again.

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 ■ 2016, the Department received Respondent's application for FAP. By signing the application Respondent acknowledged her responsibility to report changes in household circumstances to the Department within ten days. On the application, he also indicated that he did not have any income from employment.
2. On March ■ 2016, the Department issued a Notice of Case Action to Respondent advising him that he was approved for FAP benefits for a group size of one based upon \$0.00 earned income. The Notice of Case Action also reminded him of the obligation to report changes in circumstances to the Department within ten days and provided a copy of a Change Report to facilitate the reporting of any future changes.
3. On or about January 27, 2017, the Department received a Wage Match indicating Respondent had unreported income.
4. Equifax Employment Verification shows that Respondent returned to work with ■ (Employer 1) on August ■ 2016 and continued working through at least the pay date December ■ 2016.
5. Respondent never reported his employment to the Department.
6. The Department continued to issue FAP benefits to Respondent from October 2016 through December 2016.
7. On November ■ 2017, Respondent began employment with ■ ■ (Employer 2) and received his first paycheck on November ■ 2017. Respondent continued working for Employer 2 through at least the pay date April ■ 2018.
8. On January ■ 2018, the Department received Respondent's completed Redetermination on which he answered all income related questions "N/A" and signed the form under penalty of perjury indicating that his statements were true and complete.
9. On January ■ 2018, the Department issued a Notice of Case Action to Respondent advising him that he was approved for FAP benefits based upon \$0.00 earned income and reminded him to report changes 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 changes.
10. As a result of the Respondent's statements, the Department issued \$■ to Respondent from January 2018 through April 2018 based upon \$0.00 earned income.

11. On April 26, 2022, the Department established a debt for the periods October 2016 through December 2016 in the amount of \$[REDACTED] and from January 2018 through April 2018 in the amount of \$[REDACTED]
12. Respondent does not have an apparent physical or mental impairment that would limit the understanding or ability to accurately report changes in household circumstances to the Department.
13. Respondent has no prior FAP IPV disqualifications.
14. On May 4, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally concealed and misrepresented his employment income and as a result received FAP benefits from October 2016 through December 2016 and January 2018 through April 2018 (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.
15. 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 (January 2016); BEM 556 (July 2013), 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 (October 2016), 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 via his application dated February ■ 2016. Despite being informed of and acknowledging the obligation to report changes, Respondent began employment in August 2016 and worked continuously through at least December 2016. Respondent never reported his earned income. As a result, the Department continued to issue FAP benefits to Respondent based upon \$0.00 earned income. The Department only became aware of the income based upon a Wage Match. The Department routinely matches recipient employment data with the Unemployment Insurance Agency (UIA) through computer data exchanges. BAM 802 (January 2016), p. 1. The Department submits social security numbers to the UIA quarterly to be cross-matched with the work history records submitted by Michigan employers. *Id.* The information is compared to the client’s gross earnings in Bridges. Wage Match Client Notices are issued to clarify any discrepancy. BAM 802, p. 2.

Then in November 2017, Respondent began employment with Employer 2. He worked continuously through at least April 2018. On January ■ 2018, the Department received his completed Redetermination on which he failed to indicate that he had employment income instead writing “N/A” and then signed the form under penalty of perjury indicating all information contained within the form was true and complete. As a result, the Department issued FAP benefits to Respondent from January 2018 through April 2018 based upon \$0.00 income.

On April 26, 2022, the Department established a debt for overissued FAP benefits in the amount of \$[REDACTED] for the period October 2016 through December 2016 and \$[REDACTED] for the period January 2018 through April 2018. Given that Respondent concealed income from Employer 1, misrepresented his income while working with Employer 2, and finally that the Department only became aware of the income from Employer 1 based upon the Wage Match, 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.

IT IS FURTHER ORDERED that Respondent be personally disqualified from FAP for a period of 12 months.

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
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StebbinsN

MOAHR

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Via-First Class Mail :

Respondent

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]