



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: October 19, 2023
MOAHR Docket No.: 23-002614
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 19, 2023.

Allyson Carneal, 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?
3. Did Respondent receive an overissuance (OI) of FAP benefits that MDHHS is entitled to recoup and/or collect as a recipient claim?

FINDINGS OF FACT

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

1. From February 1, 2021 to October 31, 2021 (fraud period) Respondent received \$██████████ in FAP benefits subject to recoupment. (Exhibit A, pp. 64-67)
2. On November ████ 2020, Respondent submitted an Assistance Application for FAP for her family. Respondent reported household income from her spouse's employment with ██████████ as an average of 38 hours per week, \$15.00 per hour. Respondent also noted that she had three weeks left of unemployment benefits. (Exhibit A, pp. 10-19)
3. Respondent's signature on the Assistance Application certified that she read and understood the rights and responsibilities. This would include providing accurate information and timely reporting changes. (Exhibit A, pp. 19-25)
4. On November ████ 2020, an interview was completed with Respondent. Employment income for Respondent's spouse with ██████████ ██████████ ██████████ and Respondent's unemployment benefits were reported. The rights and responsibilities were reviewed with Respondent. (Exhibit A, pp. 26-29)
5. The Department received paystubs for Respondent's spouse from October 16, 2020 through November 13, 2020. (Exhibit A, pp. 30-32)
6. On November ████ 2020, the Department verified Respondent's unemployment benefit income. (Exhibit A, pp. 33-38)
7. On November ████ 2020, a Notice of Case Action was issued approving FAP for the household of six. A budget summary was included showing \$██████████ of earned income and \$██████████ of unearned income was included in the FAP budget. (Exhibit A, pp. 39-44)
8. The November ████ 2020, Notice of Case Action reminded Respondent of the responsibility to report changes. Specifically, Respondent was a simplified reporter and was only required to report when the household gross monthly income exceeded \$3,809.00. A change in income over this amount was to be reported by the 10th day of the following month. A Simplified Six Month Review explained the simplified reporting process. (Exhibit A, pp. 41-46)
9. On March ████ 2021, Respondent submitted a Semi-Annual Contact Report for FAP for her family. Respondent reported household employment income had not changed by more than \$100.00 from \$██████████ and that there had been no changes by more than \$100.00 with income from other sources, such as unemployment. (Exhibit A, pp. 47-49)

10. Respondent's signature on the Semi-Annual Contact Report certified that she read and understood the rights and responsibilities. This would include providing accurate information. (Exhibit A, p. 49)
11. A screen shot was submitted showing that Respondent's unemployment benefits closed March 6, 2021. (Exhibit A, p. 50)
12. Employment verification documented Respondent's wages from employment with [REDACTED] [REDACTED] [REDACTED] starting April 1, 2020. (Exhibit A, pp. 51-55)
13. A report from The Work Number showed employment income for household member W.A. from employment with [REDACTED] from July 19, 2020 through March 11, 2022. (Exhibit A, pp. 56-58)
14. On September 24, 2021, Respondent submitted a Redetermination and reported the only household income was from her spouse's employment at [REDACTED] [REDACTED] averaging 58.36 hours per week, \$[REDACTED] every two weeks. Respondent noted her spouse's pay at [REDACTED] fluctuates. (Exhibit A, pp. 59-63)
15. Respondent was aware of the responsibility to report when household income exceeded the simplified reporting limit. (Exhibit A, pp. 41-46)
16. Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the change reporting requirements. (Exhibit A, pp. 15, 19, and 60)
17. Respondent has no prior FAP IPV disqualifications. (Exhibit A, p. 1)
18. On May 10, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to timely report when the household income exceeded the simplified reporting limit and as a result, received FAP benefits from February 1, 2021 to October 31, 2021 (fraud period) that Respondent was ineligible to receive. OIG requested that (i) Respondent repay \$[REDACTED] to MDHHS for FAP benefits that Respondent was ineligible to receive and (ii) Respondent be disqualified from receiving FAP benefits for a period of 12 months due to committing an IPV. (Exhibit A, pp. 1-88)
19. 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 1, 2017), p. 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 based on a failure to report when the household income exceeded the simplified reporting limit, resulting in receiving a greater amount of FAP benefits from February 1, 2021 to October 31, 2021 (fraud period) than Respondent was eligible to receive.

Department policy requires clients to completely and truthfully answer all questions on forms and in interview. BAM 105 (July 1, 2020) p. 9. FAP simplified reporting households must report when the household monthly income exceeds the monthly gross income limit for its household size. 7 CFR 273.12(a)(5)(ii)(G)(1) Further, periodic reports are to be submitted on which it is requested that the household report any changes in circumstances. 7 CFR 273.12(a)(5)(iii) Similarly, Department policy regarding change reporting for FAP simplified reporting household indicates that simplified reporting groups are required to report only when the group's actual gross monthly income (not converted) exceeds the Simplified

Reporting (SR) income limit for their group size. If the group has an increase in income, the group must determine their total gross income at the end of that month. If the total gross income exceeds the group's SR income limit, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. BAM 200, January 1, 2021, p. 1. Simplified reporting households must also complete the Simplified Six Month Review form. Groups meeting the simplified reporting category at application and redetermination are assigned a 12-month benefit period and are required to have a semi-annual contact. BAM 200, pp. 2-3.

The Department has established that Respondent was aware of the responsibility to accurately and timely report household income. Respondent's signature on the Assistance Application certified that she read and understood the rights and responsibilities. This would include providing accurate information and timely reporting changes. (Exhibit A, pp. 19-25). The rights and responsibilities were also discussed during the interview. (Exhibit A, p. 29). Respondent's signature on the Semi-Annual Contact Report certified that she read and understood the rights and responsibilities. This would include providing accurate information. (Exhibit A, p. 49). The November █ 2020, Notice of Case Action reminded Respondent of the responsibility to report changes. Specifically, Respondent was a simplified reporter and was only required to report when the household gross monthly income exceeded \$3,809.00. A change in income over this amount was to be reported by the 10th day of the following month. A Simplified Six Month Review explained the simplified reporting process. (Exhibit A, pp. 41-46). Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the change reporting requirements. (Exhibit A, pp. 15, 19, and 60).

On November █ 2020, Respondent submitted an Assistance Application for FAP for her family. Respondent reported household income from her spouse's employment with █ as an average of 38 hours per week, \$15.00 per hour. Respondent also noted that she had three weeks left of unemployment benefits. (Exhibit A, pp. 10-19). On November █ 2020, an interview was completed with Respondent. Employment income for Respondent's spouse with █ █ █ and Respondent's unemployment benefits were reported. (Exhibit A, pp. 26-29). The Department received paystubs for Respondent's spouse from October 16, 2020 through November 13, 2020. (Exhibit A, pp. 30-32). On November 24, 2020, the Department verified Respondent's unemployment benefit income. (Exhibit A, pp. 33-38). On November █ 2020, a Notice of Case Action was issued approving FAP for the household of six. A budget summary was included showing \$█ of earned income and \$█ of unearned income was included in the FAP budget. (Exhibit A, pp. 39-44). The November █ 2020, Notice of Case Action reminded Respondent of the responsibility to report changes. Specifically, Respondent was a simplified reporter and was only required to report when the household gross monthly income exceeded \$3,809.00. A change in income over this amount was to be reported by the 10th day of the following month. A Simplified Six Month Review explained the simplified reporting process. (Exhibit A, pp. 41-46).

On March █ 2021, Respondent submitted a Semi-Annual Contact Report for FAP for her family. Respondent reported household employment income had not changed by more than \$100.00 from \$█ and that there had been no changes by more than

\$100.00 with income from other sources, such as unemployment. (Exhibit A, pp. 47-49). A screen shot was submitted showing that Respondent's unemployment benefits closed March 6, 2021. (Exhibit A, p. 50). Employment verification documented Respondent's wages from employment with [REDACTED] [REDACTED] [REDACTED] starting April 1, 2020. (Exhibit A, pp. 51-55). A report from The Work Number showed employment income for household member W.A. from employment with [REDACTED] from July 19, 2020 through March 11, 2022. (Exhibit A, pp. 56-58). On September [REDACTED] 2021, Respondent submitted a Redetermination and reported the only household income was from her spouse's employment at [REDACTED] [REDACTED] averaging 58.36 hours per week, \$[REDACTED] every two weeks. Respondent noted her spouse's pay at [REDACTED] fluctuates. (Exhibit A, pp. 59-63).

There was no evidence that Respondent reported when the household income exceeded the simplified reporting limit. Further, when Respondent's son turned 18 in March of 2021, his earnings should have been reported and counted in the FAP budgets starting in April 2021. (Exhibit A, p. 3). The Department determined that the failure to timely report the increase in household income resulted in an OI of FAP benefits from February 1, 2021 to October 31, 2021. (Exhibit A, pp. 68-86).

The evidence establishes that Respondent failed to report when the household income exceeded the simplified reporting limit, as required by policy. Therefore, MDHHS has 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 established by clear and convincing evidence that Respondent committed an IPV. Respondent has no prior FAP IPV disqualifications. (Exhibit A, p. 1). Because this was Respondent's first IPV for FAP, Respondent is subject to a 12-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 1, 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 1, 2017), p. 6; BAM 705 (October 1, 2018), p. 6.

In this case, MDHHS alleged that Respondent was overissued FAP benefits totaling \$[REDACTED] during the fraud period. From February 1, 2021 to October 31, 2021 (fraud period) Respondent received \$[REDACTED] in FAP benefits subject to recoupment. (Exhibit A, pp. 64-67). When the verified income was utilized to re-determine FAP eligibility,

Respondent was not eligible to receive FAP benefits during the fraud period. Therefore, MDHHS is entitled to repayment from Respondent of \$ [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 12-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 be personally disqualified from FAP for a period of 12 months.

CL/dm



Colleen Lack
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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Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

Respondent

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