



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: November 27, 2023
MOAHR Docket No.: 23-003559
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [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 October 24, 2023.

Mark Mandrecky, 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 May 1, 2019 to September 30, 2019 (fraud period) Respondent received \$[REDACTED] in FAP benefits. (Exhibit A, pp. 100-103)
2. On February [REDACTED] 2019, Respondent submitted an Assistance Application for FAP for her family, which included spouse [REDACTED] [REDACTED]. The only employment income Respondent reported was from her employment with [REDACTED] [REDACTED] 40 hours per week, \$[REDACTED] per hour. (Exhibit A, pp. 106-113)
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. 113 and 121-138; Regulation Agent Testimony)
4. On July [REDACTED] 2019 Respondent submitted a Renew Benefits for FAP. Respondent reported no employment income. The only household income reported was child support. (Exhibit A, pp. 9-10)
5. Payroll records show Respondent's employment with [REDACTED] with a start date of February [REDACTED] 2019. Respondent's earnings were documented. (Exhibit A, pp. 27-59)
6. Payroll records show Respondent's spouse's employment with [REDACTED] with a hire date of February [REDACTED] 2019. Respondent's spouse's earnings were documented. (Exhibit A, pp. 60-91)
7. The Department verified the household income from child support. (Exhibit A, p. 92)
8. A report from the Work Number shows Respondent's employment with [REDACTED] [REDACTED] with a start date of January [REDACTED] 2019. Respondent's earnings were documented, which show no income after the January [REDACTED] 2019 pay date. (Exhibit A, pp. 93-94)
9. A report from the Work Number shows Respondent's spouse's employment with [REDACTED] with a start date of January [REDACTED] 2019. Respondent's spouse's earnings were documented, which show income for only a January [REDACTED] 2019 pay date. (Exhibit A, pp. 95-96)
10. The Department determined that the household income exceeded the simplified reporting limit each month from March 2019 through September 2019. (Exhibit A, pp. 97-98)

11. The documentary evidence does not establish that Respondent was aware of the responsibility to accurately and timely report to the Department when the household income exceeded the simplified reporting limit.
12. 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, p. 110)
13. Respondent has no prior FAP IPV disqualifications. (Exhibit A, pp. 104-105)
14. On June 28, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to timely report household income and as a result, received FAP benefits from May 1, 2019 to September 30, 2019 (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. 1-142)
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 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 understanding 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 household income, resulting in receiving a greater amount of FAP benefits from May 1, 2019 to September 30, 2019 (fraud period) than Respondent was eligible to receive. Specifically, the Department determined that the household income exceeded the simplified reporting limit each month from March 2019 through September 2019. (Exhibit A, pp. 97-98).

Department policy requires clients to completely and truthfully answer all questions on forms and in interview. BAM 105 (January 1, 2019) 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, 2017, 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 not established that Respondent was aware of the responsibility to accurately and timely report household income as a simplified reporter. 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 within 10 days, the general reporting requirements as a change reporter. (Exhibit A, pp. 113 and 121-138; Regulation Agent Testimony). However, the Department has not provided sufficient evidence that Respondent was advised of the

reporting responsibilities as a simplified reporter. For example, no copy of a Notice of Case Action was included in the Department's exhibits, which would have advised Respondent that she was a simplified reporter and was only required to report when the household gross monthly income exceeded the applicable simplified reporting limit for her FAP group size. This notice would have explained that a change in income over this amount was to be reported by the 10th day of the following month.

The evidence establishes that Respondent failed to accurately report household income on the application and renew benefit forms and did not report when the household income exceeded the simplified reporting limit, as required by policy. However, the overissuance was due to not reporting when the household income exceeded the applicable simplified reporting limit. The Department has not established that Respondent was aware of the responsibility to accurately and timely report household income as a simplified reporter. 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 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 May 1, 2019 to September 30, 2019 (fraud period) Respondent received \$[REDACTED] in FAP benefits. (Exhibit A, pp. 100-103). When the corrected household income was utilized to redetermine eligibility for FAP, Respondent's household was not eligible for FAP benefits during the fraud period. (Exhibit A, pp. 11-24 and 97-98). Therefore, MDHHS is entitled to repayment from Respondent of \$[REDACTED] in overissued FAP benefits for the fraud period.

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.
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.

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**

DHHS
Kimberly Reed
Montcalm County DHHS
**MDHHS-Montcalm-
Hearings@michigan.gov**

Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

Respondent

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