



GRETCHEN WHITMER  
GOVERNOR

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

MARLON BROWN  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

Date Mailed: October 8, 2024  
MOAHR Docket No.: 24-001542  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: L. Alisyn Crawford**

**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] 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 4, 2024. Holly Brown, 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 12 months?
3. Did Respondent receive an overpayment (OP) 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. On [REDACTED] 2021, the Department received an assistance application from Respondent requesting FAP for herself, her husband (Husband), and their four minor children. (Exhibit A, pp. 9-18). The household's only income was Husband's unemployment benefits. Respondent's signature on the application certified that she

read and understood the rights and responsibilities. This would include timely reporting changes.

2. On March 30, 2021, the Department completed a FAP phone interview with Respondent. (Exhibit A, pp. 19-21). Respondent confirmed that she understood her rights and responsibilities.
3. On April 25, 2021, Husband was arrested and incarcerated at [REDACTED] County Jail. (Exhibit A, p. 38).
4. On October 20, 2021, the Department received a State Emergency Relief (SER) assistance application from Respondent. (Exhibit A, pp. 25-31). Respondent reported that Husband was temporarily absent from the home. (Exhibit A, p. 28). Respondent reported a change in employment in the last 30 days of the application and that Husband's unemployment benefits ended on September 4, 2021. (Exhibit A, p. 30). Respondent noted on the assistance application that Husband was incarcerated. (Exhibit A, p. 34).
5. On October 31, 2021, Husband was released from custody on October 31, 2021. (Exhibit A, p. 38).
6. From June 1, 2021 to October 31, 2021, Respondent received \$5,066 in FAP benefits for a six-person FAP group. (Exhibit A, pp. 39-45).
7. Respondent was aware of the responsibility to report changes in household composition.
8. Respondent does not have an apparent physical or mental impairment that would limit the understanding or ability to accurately report household composition and residency changes.
9. Respondent has no prior FAP IPV disqualifications.
10. On February 22, 2024, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to timely report her Husband's incarceration to the Department and as a result received FAP benefits from June 1, 2021 to October 31, 2021 (fraud period) that Respondent was ineligible to receive. OIG requested that (i) Respondent repay \$846 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.
11. 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 (June 2024), p. 5.

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, the Department alleges that Respondent committed an IPV based on her failure to timely report Husband's incarceration and temporary absence from the household due to the incarceration that resulted in Respondent receiving FAP benefits she was ineligible to receive. To establish an IPV, the Department must present clear and convincing evidence that Respondent intentionally made a false or misleading statement or misrepresented or withheld facts on purpose to receive or continue to receive extra benefits. BAM 720, p. 1.

There was no dispute that Respondent was incarcerated during the alleged fraud period. Policy directs Respondent to report a group member's absence from the household within 10 days of the change, and Respondent did not timely report Husband's incarceration to the Department as required by policy. BAM 105, (October 1, 2019), pp. 11-13. The Department learned of Husband's incarceration when Respondent reported such in her SER application while Husband was still incarcerated. While Respondent did not timely report Husband's incarceration, she did disclose it the first time that she submitted any documentation to the Department. Based on a review of the complete record, the evidence presented is insufficient to conclude that Respondent intentionally withheld or misrepresented information for the purpose of maintaining, increasing or preventing reduction of program benefits. Therefore, the Department 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, the Department has not established by clear and convincing evidence that Respondent committed an IPV; therefore, Respondent is not subject to a FAP disqualification from receipt of FAP benefits.

### **Overissuance**

When a client group receives more benefits than entitled to receive, MDHHS must attempt to recoup the OP as a recipient claim. 7 CFR 273.18(a)(2); BAM 700 (June 2024), p. 2. The amount of a FAP OP 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 (June 2024), p. 6; BAM 705 (June 2024), p. 6.

The Department alleges that as a result of Respondent's failure to report Husband's incarceration, she received an OP of FAP benefits from June 1, 2021 to October 31, 2021. Due to the COVID-19 pandemic, the federal government authorized the State of Michigan to issue Emergency Allotments (EA) to all FAP households, meaning that FAP households not receiving the maximum benefit for their group size would receive a supplement to bring their benefit amount to the maximum for their group size. ESA Memo 2020-15 (March 2020; updated December 2020). The State of Michigan issued EA from April 2020 to February 2023. ESA Memo 2023-10 (February 2023). In addition, beginning in May 2021, the Department began issuing a minimum \$95 supplement to all FAP households, including households that were receiving the maximum allotment for their household size. ESA Memo 2021-22 (May 2021). Wrongfully issued EA are recoupable by the Department if the FAP household is not eligible for any FAP benefits during the month at issue.

In this case, the Department alleged that Respondent was overissued FAP benefits totaling \$846 during the fraud period. From June 1, 2021 to October 31, 2021, Respondent received \$5,066 in FAP benefits, consisting of her monthly FAP allotment and monthly FAP EA. (Exhibit A, pp. 39-50). When Respondent's FAP group size is

reduced from six to five and Husband's unemployment benefits income is removed to re-determine Respondent's FAP eligibility for her household, Respondent was eligible to receive \$4,220 in FAP benefits during the fraud period. RFT 260 (October 2020 and October 2021), p. 1. Therefore, the Department is entitled to repayment from Respondent of \$846 in overissued FAP benefits, which is the difference in the \$5,066 in FAP benefits she received and the \$4,220 she was entitled to receive.

### **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 OP of FAP benefits in the amount of \$846.

**IT IS ORDERED** that MDHHS initiate recoupment and/or collection procedures in accordance with MDHHS policy for a FAP OP in the amount of \$846, less any amounts already recouped/collected for the fraud period.

**IT IS FURTHER ORDERED** that the Department's request for Respondent to be personally disqualified from FAP for the period of 12-months is **DENIED**.

LC/ml

  
**L. Alisyn Crawford**  
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  
PO Box 30062  
Lansing, MI 48909-7562  
**MDHHS-OIG-HEARINGS@michigan.gov**

**DHHS**

Abigail Norton  
St Joseph County DHHS  
692 E. Main  
Centreville, MI 49032  
**MDHHS-StJosephCo-Hearings@michigan.gov**

**Interested Parties**

Policy Recoupment  
N Stebbins  
MOAHR

**Via First Class Mail:**

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]