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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: February 5, 2020
MOAHR Docket No.: 18-009420-R
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION TO ESTABLISH
INTENTIONAL PROGRAM VIOLATION AND RECIPIENT CLAIM FOLLOWING
REMAND BY CIRCUIT COURT**

Upon the request for a hearing by the Michigan Department of Health and Human Services (MDHHS), a hearing in this matter was originally held on December 10, 2018, and a corresponding hearing decision was mailed on December 11, 2018. Respondent did not appear for the hearing.

After Respondent requested a rehearing due to not receiving notice of the hearing, a rehearing was granted on January 17, 2019. The rehearing was scheduled for February 25, 2019; the rehearing was adjourned due to a weather emergency.

The rehearing was rescheduled for April 8, 2019, from Detroit, Michigan, and a hearing was held on the scheduled hearing date. MDHHS was represented by Ian Gill, regulation agent with the Office of Inspector General. Respondent appeared and was unrepresented. A Hearing Decision was issued on April 12, 2019.

Respondent subsequently appealed the Hearing Decision dated April 12, 2019, to the Baraga County Circuit Court. On November 22, 2019, a circuit court judge vacated and set aside the administrative hearing decision dated April 12, 2019. Additionally, the circuit court remanded the hearing for the purpose of conducting an evidentiary hearing to determine whether Respondent fraudulently spent Michigan-issued Food Assistance Program (FAP) benefits.

On January 6, 2020, an evidentiary hearing was held pursuant to the circuit court's order. [REDACTED] of Legal Services of Northern Michigan, participated as Respondent's legal counsel. Respondent and [REDACTED], Respondent's mother, each testified. H. Daniel Beaton, assistant attorney general, participated as MDHHS legal counsel. Ian Gill, regulation agent from the Office of inspector general, testified on behalf of MDHHS.

ISSUES

The first issue is whether MDHHS established a recipient claim of Food Assistance Program (FAP) benefits against Respondent.

The second issue is whether MDHHS established by clear and convincing evidence that Respondent committed an intentional program violation (IPV) which justifies imposing a disqualification against Respondent.

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 July 15, 2016, Respondent submitted to MDHHS an application for FAP benefits. Boilerplate application language informed Respondent to report changes to MDHHS within 10 days. Exhibit A, pp. 11-30.
2. From February 2017 through May 2017, MDHHS issued a total of \$776 in FAP benefits to Respondent. Exhibit A, pp. 55-56.
3. On February 3, 2017, Respondent applied for FAP benefits from the State of Louisiana. Exhibit A, pp. 31-44.
4. From February 2017 through July 2017, Respondent received FAP benefits from the State of Louisiana.
5. On August 29, 2018, MDHHS requested a hearing to establish that Respondent received an overissuance (OI) of \$776 in FAP benefits from February 2017 through May 2017. MDHHS also requested a hearing to establish a 10-year IPV disqualification against Respondent due to duplicate receipt of FAP benefits.
6. As of the date of hearing, Respondent had no previous IPV disqualifications. Exhibit A, p. 57.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. MDHHS (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-119b, and Mich Admin Code, R 400.3001-.3011. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

MDHHS requested a hearing to establish that Respondent committed an IPV. Exhibit A, p. 1. MDHHS may request a hearing to establish an IPV. BAM 600 (October 2017) p. 5. An unsigned Intentional Program Violation Repayment Agreement alleged that Respondent received \$776 in duplicate FAP benefits. Exhibit A, pp. 5-6.

The types of recipient claims are those caused by agency error, unintentional recipient claims, and IPV. 7 CFR 273.18(b). An IPV shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards.¹ 7 CFR 273.16(c).

An IPV requires clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an IPV. 7 CFR 273.16(e)(6). Clear and convincing evidence must be strong enough to cause a clear and firm belief that the proposition is true; it is more than proving that the proposition is probably true. M Civ JI 8.01. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

For all programs, benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. BEM 222 (October 2016), pp. 1-3. For FAP benefits, benefit duplication is prohibited except in limited circumstances (such as a residency in a domestic violence shelter). 7 CFR 273.12(a)(2) and *Id.*

MDHHS presented documentation of Respondent's FAP benefit issuance history from the State of Michigan. Exhibit A, pp. 55-56. FAP issuances to Respondent from February 2017 through May 2017 totaling \$776 were listed.

As of an unspecified date, MDHHS learned that Respondent may have received FAP benefits from Louisiana while receiving benefits from Michigan. MDHHS contacted the State of Louisiana requesting information of Respondent's FAP history. On July 25, 2017, a program specialist from Louisiana emailed MDHHS and stated that Respondent received FAP benefits from Louisiana from February 2017 through July 2017. Exhibit A, pp. 45-46.

Respondent did not dispute receiving duplicate FAP benefits from the States of Louisiana and Michigan from February 2017 through July 2017. The evidence established that duplicate FAP benefits were issued in Respondent's name from February 2017 through May 2017. MDHHS alleged that Respondent purposely failed to report receipt of duplicate FAP benefits and/or residency outside of Michigan for the purpose of receiving \$776 in duplicate benefits. To establish a purposeful intent to not

¹ SNAP is the Supplemental Nutrition Assistance Program. It is the federal equivalent of FAP.

report information, MDHHS must first establish that Respondent had an obligation to report receipt of duplicate FAP benefits and/or residency outside of Michigan.

FAP groups with countable earnings are assigned to the simplified reporting (SR) category. BAM 200 (December 2013) p. 1. Simplified reporting groups are required to report only when the group's actual gross monthly income exceeds the SR income limit for their group size. *Id.*, p. 1. No other change reporting is required. *Id.*

Certified change reporting households, as opposed to simplified reporting households, are required to report to MDHHS various changes in household circumstances. Changes required to be reported include changes in residence. 7 CFR 273.12(a). MDHHS also requires non-simplified reporting groups to report changes in residence. BAM 105 (January 2018), p. 12. BAM 105 lists other items which clients must report to MDHHS, though the list is stated not to be exhaustive. Receipt of benefits from another state is not among the items listed. Though receipt of FAP benefits from another state is not specifically listed in BAM 105, it is such an obviously relevant factor that it is found to be a change which must be reported to MDHHS.

Respondent was only required to report to MDHHS a change in residency if she was a change reporter (i.e. not a simplified reporter). Notably, Respondent's application dated July 15, 2016, reported no receipt of employment income; not having employment income as of July 2016 is consistent with being a change reporter in August 2016. Exhibit A, pp. 11-30. No evidence suggested that Respondent reported earnings to MDHHS before or during the alleged overissuance period. The evidence established that Respondent was not a simplified reporter. Thus, Respondent was obligated to report to MDHHS changes in residence and/or receipt of duplicate FAP benefits.

Respondent contended that she reported a residency change to MDHHS. At the hearing dated January 6, 2020, Respondent testified that she moved to Louisiana in September 2016, and shortly before her move, she asked MDHHS to close her FAP case. Respondent testified that she made this request while her mother waited in the parking lot. Respondent's mother testified that she and Respondent went to the MDHHS office to request case closure before her daughter's move to Louisiana. Additionally, Respondent testified that she threw her EBT card away soon after she requested closure of her case.² Respondent testified that she was oblivious to any usage of her Michigan-issued FAP benefits after August 2016 because of her request to close her case. There are reasons to be skeptical of Respondent's claim that she was oblivious to the usage of her Bridge Card after August 2016.

At the hearing dated January 6, 2020, Respondent testified that she requested case closure from an unnamed MDHHS employee who was assigned to work in the lobby. However, during the hearing held on April 8, 2019, Respondent testified that she asked her assigned specialist to close her case.

² MDHHS issues FAP benefits to clients via the EBT card. The EBT card is used by clients to spend FAP benefits.

Also, accepting Respondent's testimony requires acceptance that her allegedly discarded EBT card was retrieved from the trash. Documentation of Respondent's FAP expenditures from February 2017 through July 2017 listed multiple purchases utilizing a swiping of the card, as opposed to keying the Bridge Card number. Exhibit A, p. 52. Thus, the fraud alleged by Respondent required physical possession of Respondent's EBT Card.

Accepting Respondent's scenario also requires acceptance that someone was able to obtain or change Respondent's personal identification number (PIN). The evidence did not establish how difficult it would be for a person to change someone's PIN.³ Respondent testified that she thought only a name and address were required to change a PIN, but she later admitted that she was uncertain. During the hearing held on April 8, 2019, Petitioner was asked how someone would have retrieved her Bridge Card and learn her personal identification number (PIN). Petitioner responded with uncertainty but testified that she may have thrown out her PIN along with her card.

Under MDHHS' scenario, Respondent did not request closure of FAP benefits and purposely continued to receive Michigan-issued FAP benefits after applying for and receiving food benefits from Louisiana. A failure to report by Respondent is consistent with Respondent receiving FAP benefits for several months after her acknowledged move to Louisiana. MDHHS' scenario is consistent with all evidence other than the unverified statements of Respondent and her mother. Respondent's scenario is based on an improbable combination of events involving neglect by MDHHS and skillful thievery by an unknown individual.

However, in remanding this case, a county circuit court judge stated, "It is the burden of [MDHHS] to establish by clear and convincing evidence, not only that [Respondent's] Michigan FAP benefits were wrongfully spent, but also that she is the individual who intentionally spent them." Based on the circuit court's decision, to establish an IPV against Respondent, MDHHS must clearly and convincingly establish that Respondent, or someone acting on Respondent's behalf, spent Michigan-issued FAP benefits. The plausibility of Respondent's claim is not relevant.

Documentation of Respondent's Michigan-issued FAP benefit history listed Wisconsin as the exclusive state of expenditures beginning January 19, 2017. Exhibit A, p. 52. During the hearing held on April 8, 2019, MDHHS testified that Respondent's Michigan-issued FAP benefits were exclusively spent in Wisconsin back to September 2016. Expenditures exclusively within Wisconsin is consistent with Respondent, who applied for FAP benefits in Louisiana in February 2017, not being the person who spent the benefits.

As of the hearing conducted on January 6, 2020, MDHHS should have been aware of Respondent's claim that her EBT card had been fraudulently taken based on

³ MDHHS' website states that a PIN can be changed by calling the toll-free hotline. It does not state what details are needed to change a client's PIN. https://www.michigan.gov/mdhhs/0,5885,7-339-8319_9255-18561--,00.html

Respondent's statements in two previous hearings. In response to Respondent's statements, MDHHS could have obtained photographs or video from the allegedly fraudulent use of Respondent's EBT card.⁴ If Respondent was herself photographed spending Michigan-issued FAP benefits in Wisconsin, her claim of fraud would be undermined. MDHHS could have obtained the location of Respondent's Louisiana-issued FAP expenditures from the State of Louisiana; if Respondent's Louisiana-issued FAP benefits were spent also in Wisconsin, her claim of fraud would be less persuasive. MDHHS could have also presented evidence of the process of changing a PIN; if changing a PIN requires private information that would be unlikely to have been thrown out by Respondent (e.g.- a social security number), Respondent's claim of fraud is less persuasive. MDHHS presented no such evidence during the hearing conducted on January 6, 2020.

Based on the standard set forth by the Baraga County Circuit Court, MDHHS did not clearly and convincingly establish that Respondent, or someone on her behalf, wrongfully spent Michigan-issued FAP benefits. Thus, MDHHS is denied its request to establish an IPV against Respondent.

Federal regulations state that an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple SNAP benefits simultaneously is ineligible to participate in the Program for a period of 10 years. 7 CFR 273.16(b)(5). Similarly, MDHHS policy states that a person is disqualified for a period of 10 years for having made a fraudulent statement or representation regarding identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (October 2015), p. 1. In all other circumstances, the standard disqualification period is used unless a court orders a different period. MDHHS is to apply the following disqualification periods to recipients determined to have committed an IPV: one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. 7 CFR 253.8(b) and BAM 725 (January 2016), p. 16.

MDHHS did not establish an IPV by Respondent. Without a finding of an IPV, an IPV disqualification may not follow. Thus, MDHHS is denied its request to establish a 10 year or shorter disqualification period against Respondent.

MDHHS also requested a hearing to establish an overissuance of \$776 in FAP benefits against Respondent. MDHHS may request a hearing to establish a debt. BAM 600 (October 2017) p. 5.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (January 2016), pp. 1-2. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. *Id.* Recoupment is an MDHHS action to identify and recover a benefit

⁴ From January 2017 through July 2017, Respondent's EBT card was used exclusively at Walmart. In other hearings unrelated to Respondent, MDHHS presented photographic evidence of persons spending FAP benefits at Walmart in an attempt to establish an IPV.

overissuance. *Id.* Federal regulations refer to overissuances as “recipient claims” and mandate states to collect them. 7 CFR 273.18(a).

In the IPV analysis, it was found that MDHHS did not clearly and convincingly establish that Respondent spent FAP benefits fraudulently. Without a finding that Respondent fraudulently spent FAP benefits, a corresponding overissuance cannot follow. Thus, MDHHS is denied its request to establish a recipient claim against Respondent.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish a basis for an IPV disqualification period against Respondent. MDHHS additionally failed to establish an OI of benefits. The MDHHS requests to establish an IPV disqualification and recipient claim against Respondent are **DENIED**.

CG/cg



Christian Gardocki

Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

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 Email:

MDHHS-Iron-Hearings
OIG Hearings
Recoupment
MOAHR

**Respondent –
Via First-Class Mail:**

[REDACTED]

**Counsel for Petitioner –
Via First-Class Mail:**

[REDACTED]