



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: December 23, 2020
MOAHR Docket No.: 20-002988
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 November 30, 2020. Christopher Tetloff, 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 the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Did Respondent receive an overissuance (OI) of FAP benefits that the Department is entitled to recoup?

FINDINGS OF FACT

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

1. Respondent was a recipient of FAP benefits issued by the Department. From November 1, 2017 to November 30, 2018 (FAP fraud period), Respondent was issued \$2,496 in FAP benefits by the State of Michigan and the Department

alleges that Respondent was entitled to \$0 in such benefits during this time period, resulting in a FAP OI of \$2,496.

2. On [REDACTED], 2017, Respondent signed and submitted an assistance application to receive benefits from the Department. In signing the application, Respondent acknowledged being aware of the responsibility to accurately report his circumstances and to report changes in his circumstances to the Department, including address and residency. (Exhibit A, pp. 12-32)
3. The Department had no reason to believe that Respondent had a physical or mental impairment that would limit his understanding or ability to fulfill his reporting requirements.
4. From September 12, 2017 to November 17, 2018, Respondent used FAP benefits issued to him by the State of Michigan in Texas and Indiana. (Exhibit A, pp. 40-47)
5. On [REDACTED], 2018, Respondent signed and submitted a redetermination for his Michigan FAP and Medical Assistance (MA) cases. On the redetermination, Respondent reported that effective July 1, 2018, his phone number changed. Respondent did not disclose a change in address or residency on the redetermination. (Exhibit A, pp. 34-36)
6. During a redetermination interview completed on or around [REDACTED], 2018, Respondent reported no changes to the Department. (Exhibit A, p.33)
7. The Department obtained verification of Respondent's employment and earnings through the Work Number showing that in September 2017, he obtained employment in Texas and reported a [REDACTED] address with his employer. (Exhibit A, pp. 48-53)
8. Although documentation was not presented during the hearing, the Department asserted that based on information obtained through a collateral contact, from [REDACTED], 2017 to [REDACTED], 2018, Respondent was incarcerated in the State of [REDACTED]. There was no evidence that Respondent's FAP benefits were used during this time based on the IG-311 presented for review.
9. The Department's OIG filed a hearing request on or around May 13, 2020, alleging that Respondent intentionally failed to report his change in address and residency, and as a result received FAP benefits that he was ineligible to receive, causing a FAP OI of \$2,496.
10. This was Respondent's first alleged IPV and the Department requested that Respondent be disqualified from receiving FAP benefits for 12 months.

11. A Notice of Hearing was mailed to Respondent at his last known address and was not returned by the US Post Office 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

Effective October 1, 2014, the Department's OIG requests IPV hearings for cases involving alleged fraud of FAP benefits in excess of \$500. BAM 720 (October 2017), p. 5, 12-13. An IPV occurs when a recipient of Department benefits intentionally (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation FAP, FAP federal regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FAP benefits or electronic benefit transfer (EBT) cards. 7 CFR 273.16(c). For an IPV based on inaccurate reporting, Department policy requires that an OI, and all three of the following exist: the client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and the individual was also clearly and correctly instructed regarding his or her reporting responsibilities and the individual have no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 720, p. 1.

To establish an IPV, the Department must present clear and convincing evidence that the household member committed, and intended, to commit the IPV or intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. 7 CFR 273.16(e)(6); BAM 720, p. 1. Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01; *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 114-115; 793 NW2d 533, 541 (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).

In this case, the Department alleges that Respondent committed an IPV of his FAP benefits because he failed to report to the Department that his address changed and that he no longer resided in Michigan, but continued to receive and use Michigan issued FAP benefits while living out of state, causing an OI of FAP benefits.

The Department presented Respondent's IG-311 EBT FAP transaction history which showed that from September 12, 2017 to November 17, 2018, Respondent used FAP benefits issued to him by the State of Michigan in Texas and Indiana. The Department also presented Work Number reports showing that in September 2017, Respondent gained employment in [REDACTED] and reported having a [REDACTED] address for employment purposes. Additionally, the Department testified that information obtained through a collateral contact with authorities in the State of [REDACTED] revealed that Respondent was incarcerated in [REDACTED] from [REDACTED], 2017 through [REDACTED], 2018. While this evidence may be sufficient to establish that Respondent no longer resided in Michigan, to establish an IPV, the Department must present clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of establishing or maintaining benefit eligibility.

In support of its contention that Respondent committed an IPV, the Department presented an assistance application completed by Respondent and submitted to the Department on [REDACTED], 2017, prior to the alleged fraud period on which he reported a Michigan address and asserted a residency in the State of Michigan. The evidence showed that Respondent began using his FAP benefits out of state roughly ten days later. The Department argued that this application was sufficient to establish that Respondent was advised of his responsibility to report changes in circumstances, including residency.

Federal Regulations with respect to FAP recipients' residency requirements state that:

- (a) *A household shall live in the State in which it files an application for participation. The State agency may also require a household to file an application for participation in a specified project area (as defined in § 271.2 of this chapter) or office within the State. No individual may participate as a member of more than one household or in more than one project area, in any month, unless an individual is a resident of a shelter for battered women and children as defined in § 271.2 and was a member of a household containing the person who had abused him or her. Residents of shelters for battered women and children shall be handled in accordance with § 273.11(g). The State agency shall not impose any durational residency requirements. The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. Nor shall residency require an intent to reside permanently in the State or project area. Persons in a*

project area solely for vacation purposes shall not be considered residents.

7 CFR 273.3 (emphasis added). Although, based upon the above residency federal regulation, there is no requirement that an eligible household reside in Michigan, except at the time of application, Respondent completed a redetermination for his Michigan FAP case in ■■■ 2018, during the period of his out of state use and residency. The evidence established that Respondent failed to report any changes to the Department at the time he completed the redetermination, with the exception of a change in phone number. Respondent failed to disclose his change in address or his move out of state. The Department established that Respondent was no longer a Michigan resident at the time he submitted the ■■■ 2018 redetermination. Therefore, upon review, Respondent misrepresented his household circumstances to the Department on the application for recertification in order to maintain FAP benefits from the State of Michigan. As such, the Department has established by clear and convincing evidence that Respondent committed an IPV.

IPV Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15; BEM 708 (October 2016), p. 1. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16; 7 CFR 273.16(b). A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

As discussed above, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is subject to a 12-month disqualification under the FAP, as no evidence of a prior FAP IPV was presented.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, 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. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6; 7 CFR 278.18.

In this case, the Department asserted that from November 1, 2017 to November 30, 2018, Respondent was issued \$2,496 in FAP benefits by the State of Michigan and the Department alleges that because Respondent lacked Michigan residency, he was entitled to \$0 in such benefits during this time period. Federal regulations require that a household live in the state in which it applies for food benefits. 7 CFR 273.3(a). As discussed above, the Department presented sufficient evidence that Respondent was residing outside the State of Michigan during the fraud period and at the time he submitted the ■■■ 2018 application/redetermination. Therefore, Respondent was not

entitled to the FAP benefits issued on his behalf by the State of Michigan. The Department presented Respondent's Benefit Issuance Summary showing he received \$2,496 in FAP benefits during the fraud period. Therefore, the Department has established it is entitled to recoup/collect the \$2,496 in FAP benefits it issued to Respondent during 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. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an overissuance of FAP program benefits in the amount of \$2,496.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$2,496, less any amounts already recouped/collected, in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.

ZB/jem



Zainab A. Baydoun
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-Saginaw-Hearings
MDHHS-OIG-Hearings
Policy-Recoupment
L. Bengel
MOAHR

Respondent – Via First-Class Mail:

████████████████████
██
████████████████
██