



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: December 27, 2021
MOAHR Docket No.: 21-004420
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Danielle Nuccio

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

The Michigan Department of Health and Human Services (MDHHS or the Department) requested a hearing alleging that Respondent Freddie Wilson 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 December 1, 2021. Nicole Heinz-Hosking, 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. On June 14, 2016, Respondent was convicted of Delivery/Manufacture of a Controlled Substance weighing less than 50 grams in violation of MCL

333.7401(2)(a)(4) (a twenty-year felony) in the Thirtieth Circuit Court for Ingham County, MI. (Exhibit A, p. 44).

2. On January 10, 2014, Respondent was convicted of Possession of a Controlled Substance less than 25 grams in violation of MCL 333.7403(2)(a)(5) (a 4-year felony) in the Thirtieth Circuit Court for Ingham County (Exhibit A, p. 45-46).
3. On [REDACTED] 2016, Respondent submitted an Application for FAP and Health Care Coverage benefits for a one-person household (Exhibit A, p. 9-37). When asked if he had ever been convicted of a drug-related felony, Respondent answered "no" (Exhibit A, p. 13). Prior to submission of the Application, Respondent must agree that the information that he has provided to MDHHS is true to the best of his belief under penalty of perjury and must review his rights and responsibilities (Exhibit A, p. 10-16).
4. From January 29, 2016 to May 31, 2016, Respondent received \$794.00 in FAP benefits for a one-person FAP group (Exhibit A, p. 47).
5. Respondent does not have an apparent physical or mental impairment that would limit the understanding or ability to accurately report whether he has been convicted of any drug-related felonies.
6. Respondent has no prior FAP IPV disqualifications.
7. On September 7, 2021, MDHHS' OIG filed a hearing request alleging that Respondent intentionally concealed having two drug-related felony convictions and as a result received FAP benefits from January 29, 2016 to May 31, 2016 (fraud period) that Respondent was ineligible to receive. OIG requested that (i) Respondent repay \$794.00 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.
8. 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 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 because he concealed that he had two drug-related felony convictions occurring after August 22, 1996. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015), p. 9; 7 CFR 273.2(b)(iii). People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (October 2015), p. 1. Effective October 1, 2011, an individual convicted of a felony for the use, possession, or distribution of controlled substances will be permanently disqualified from receipt of FAP if (i) the terms of probation or parole are violated, and the qualifying conviction occurred after August 22, 1996, or (ii) the individual was convicted two or more times and both offenses occurred after August 22, 1996. BEM 203, p. 2. The offense must be classified as a felony by the law of the State and have as an element the possession, use or distribution (which is defined as actual, constructive, or attempted delivery) of a controlled substance. 21 USC 862a(a); 21 USC 802(8) and (11); 1997 PA 109. The disqualification does not apply if the conviction is for conduct occurring on or before August 22, 1996. 21 USC 862a(d)(2). Effective October 1, 2020, individuals with two or more felony drug convictions are no longer disqualified from receipt of FAP benefits. BEM 203 (October 2020). However, this case addresses Respondent's misrepresentation of his felony drug convictions prior to the change in policy.

MDHHS presented documentation evidencing that Respondent has been convicted of two drug-related felonies:

1. On June 14, 20016, Respondent was convicted of Delivery/Manufacture of a Controlled Substance weighing less than 50 grams in violation of MCL 333.7401(2)(a)(4) (a twenty year felony) in the Thirtieth Circuit Court for Ingham County, MI. (Exhibit A, p. 44).
2. On January 10, 2014, Respondent was convicted of Possession of a Controlled Substance less than 25 grams in violation of MCL 333.7403(2)(a)(5) (a 4-year felony) in the Thirtieth Circuit Court for Ingham County (Exhibit A, p. 45-46).

MDHHS confirmed Respondent's identity through his name, birth date, and social security number on the Law Enforcement Information Network (LEIN), then contacted the respective courts for a conviction record. The cited statutory grounds for each conviction establish that Respondent had more than two felony drug convictions, each of which contained an element of possession.

Respondent filled out a FAP Application after receiving both of these drug-related felony convictions. However, when asked about whether he had any drug-related felony convictions, Respondent answered "no". Respondent then signed this Application under penalty of perjury. Being untruthful in writing shows a clear intent to fraudulently obtain benefits. Respondent was then interviewed by MDHHS and again reported that he had no drug-related felony convictions. Respondent's failure to report that he had two felony drug-related convictions on his Application establish that he intentionally withheld information that, if properly disclosed, would have made him ineligible for FAP benefits.

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. There was evidence of no prior IPV's by Respondent. 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 (January 2016), p. 1-2. 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 (January 2016), p. 5-7.

MDHHS established that Respondent was not eligible to receive any FAP benefits due to having two drug-related felony convictions. MDHHS established that \$794.00 in FAP

benefits were improperly issued during the fraud period. There was no evidence that Respondent's benefit group included additional members. As the only member of the group, Respondent's ineligibility renders all FAP benefits during the alleged OI period to be over-issued. Because Respondent was issued \$794.00 in FAP benefits during the fraud period, MDHHS is entitled to repayment from Respondent of \$794.00 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 benefits.
3. Respondent did receive an OI of FAP benefits in the amount of \$794.00.

IT IS ORDERED that Respondent be personally disqualified from FAP for a period of 12 months.

IT IS FURTHER ORDERED that MDHHS initiate recoupment and/or collection procedures in accordance with MDHHS policy for a FAP OI in the amount of \$794.00, less any amounts already recouped/collected for the fraud period.



Danielle Nuccio
Administrative Law Judge

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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

Email Recipients:

MDHHS-Ingham-Hearings
OIG Hearings
LBengel
Policy Recoupment
MOAHR

First-Class Mail Recipient:

