



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]

Date Mailed: July 31, 2023
MOAHR Docket No.: 23-000642
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [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 Rosalynde Franklin 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 July 17, 2023. Doyle Owens, 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) and Medical Assistance (MA) Program benefits?
2. Should Respondent be disqualified from receiving benefits for FAP?
3. Did Respondent receive an overissuance (OI) of FAP and/or MA 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 April [REDACTED] 2020, Respondent submitted an application to MDHHS for FAP and MA benefits for a three-person group.

- a. Respondent reported a Michigan home address.
 - b. Prior to submission of the application, Respondent must agree that the information that she has provided to MDHHS is true to the best of her belief under penalty of perjury and must review rights and responsibilities as a benefit recipient.
(Exhibit A, pp. 9-16).
2. On April █ 2020, MDHHS interviewed Respondent as part of the application process. Respondent confirmed the information submitted in her application. As part of the interview, rights and responsibilities as a benefit recipient are explained to Respondent (Exhibit A, pp. 23-25).
3. On April █ 2020, MDHHS issued a Healthcare Coverage Determination Notice to Respondent informing her that she and her adult daughter were approved for MA under the Healthy Michigan Plan (HMP) and reminding her of her obligation to report changes in household circumstances to MDHHS within ten days (Exhibit A, pp. 28-30).
4. On August █ 2020, Respondent submitted an application to MDHHS for FAP and MA benefits for a three-person group.
 - a. Respondent reported a Michigan home address.
 - b. Prior to submission of the application, Respondent must agree that the information that she has provided to MDHHS is true to the best of her belief under penalty of perjury and must review rights and responsibilities as a benefit recipient.
(Exhibit A, pp. 17-22).
5. On August █ 2020, MDHHS interviewed Respondent as part of the application process. Respondent confirmed the information submitted in her application. As part of the interview, rights and responsibilities as a benefit recipient are explained to Respondent (Exhibit A, pp. 26-27).
6. On August █ 2020, MDHHS issued a Notice of Case Action to Respondent informing her that she was eligible for FAP benefits for a group size of three and reminding her of her obligation to report changes in household circumstances to MDHHS within ten days. The Notice included a blank Change Report form to facilitate the timely reporting of changes to MDHHS in the future (Exhibit A, pp. 31-38).
7. On September █ 2020, MDHHS issued a Notice of Case Action to Respondent informing her that she was eligible for FAP benefits for a group size of three and reminding her of her obligation to report changes in household circumstances to MDHHS within ten days (Exhibit A, pp. 39-43).

8. From November 2, 2020 through March 5, 2021, Respondent worked for [REDACTED] (Employer 1), filing with Employer 1 a San Antonio, Texas home address (Exhibit A, pp. 67-69).
9. On March 8, 2021, Respondent began working at [REDACTED] (Employer 2), filing with Employer 2 a San Antonio, Texas home address. As of February 3, 2023, Respondent was still actively working for Employer 2 (Exhibit A, pp. 63-66).
10. On May 12, 2021, May 17, 2021, and June 3, 2021, Respondent had contact with MDHHS and did not inform MDHHS that she no longer lived in Michigan (Exhibit A, pp. 46-48).
11. MDHHS requested that Respondent submitted a utility bill for her Michigan home in order to prove residency. Respondent uploaded a June 2021 utility bill, which showed that her mail is forwarded to San Antonio, Texas (Exhibit A, p. 70).
12. MDHHS was able to access the IP history for Respondent's MiBridges account, showing where and when Respondent accessed her MiBridges account. Based upon this information, Respondent submitted the August [REDACTED] 2020 FAP application to MDHHS while located in San Antonio, Texas. From May 5, 2020 through August 25, 2021, Respondent only accessed her MiBridges account while located in Texas (Exhibit A, pp. 71-74).
13. From October 1, 2020 through September 1, 2021, Respondent used her Michigan-issued FAP benefits exclusively out of state (Exhibit A, pp. 55-62).
14. From January 1, 2021 through August 31, 2021, Respondent received \$ [REDACTED] in FAP benefits from the State of Michigan (Exhibit A, pp. 76-79).
15. From January 1, 2021 through November 30, 2021, Respondent received \$ [REDACTED] in MA benefits from the State of Michigan (Exhibit A, pp. 80-83).
16. Respondent does not have an apparent physical or mental impairment that would limit the understanding or ability to accurately report where she is residing.
17. Respondent has no prior FAP IPV disqualifications.
18. On February 6, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to update MDHHS that she was no longer a Michigan resident and as a result was overissued FAP benefits from January 1, 2021 through August 31, 2021 (FAP fraud period) and MA benefits from January 1, 2021 through November 30, 2021 (MA fraud period).

OIG requested that:

- a. (i) Respondent repay \$ [REDACTED] to MDHHS for FAP benefits that Respondent was ineligible to receive.
 - b. (ii) Respondent repay \$ [REDACTED] to MDHHS for MA benefits that Respondent was ineligible to receive.
 - c. (iii) Respondent be disqualified from receiving FAP benefits for a period of 12-months due to committing an IPV.
19. 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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396 to 42 USC 1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10 to 42 CFR 430.25. MDHHS administers the MA program pursuant to 42 CFR 435, MCL 400.10 and MCL 400.103 to MCL 400.112k of the Social Welfare Act, MCL 400.1 *et seq.*

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), pp. 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 she concealed that she was no longer a Michigan resident.

To be eligible for FAP or MA, a person must be a Michigan resident. BEM 220 (July 2020), p. 1. Federal Regulations with respect to residency requirements for FAP recipients provide in relevant part:

- (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.

7 CFR 273.3 (Emphasis Added).

Respondent initially applied for FAP on April █ 2020. She certified that the information that she provided to MDHHS was truthful to the best of her knowledge, including that she currently lived in Michigan. As part of the application, Respondent was required to review her rights and responsibilities as a benefit recipient, including the necessity to provide an updated address and the requirement of Michigan residency to maintain benefits. Despite being aware of the importance of accurately reporting where she is residing, Respondent then later applied for Michigan-issued FAP benefits on August █ 2020, while being a resident of Texas. Respondent’s Texas residency was evidenced by her filing a Texas home address with Employer 1 and Employer 2 and being located in Texas while accessing her MiBridges account, as evidenced by her IP Address history. Respondent was in contact with MDHHS and MDHHS requested that she provide a utility bill as proof her residency. Respondent submitted a utility bill to MDHHS, that showed that her mail was forwarded to her San Antonio, Texas address (see Exhibit A, p. 70). Respondent was physically in Texas when applying for FAP on

August [REDACTED] 2020, as evidenced by the IP location for Respondent's MiBridges at the date and time of her FAP application (see Exhibit A, p. 74). Respondent certified under penalty of perjury on this August [REDACTED] 2020 FAP application that she was a resident of Michigan. During the phone interview with MDHHS on August [REDACTED] 2020, Respondent again reported that she was a Michigan resident. However, all Michigan-issued FAP benefits were used exclusively in Texas from October 1, 2020 through September 1, 2021 (see Exhibit A, pp. 55-62). While FAP can be used in any state, this exclusive use in Texas supports that Respondent was no longer a Michigan resident and misrepresented her Michigan residency in order to fraudulently obtain 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. Individuals may be disqualified for ten years for concurrent receipt of benefits if fraudulent statements were made regarding identity or residency. 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. While Respondent did make a fraudulent statement regarding her residency, during the FAP fraud period she was not receiving benefits in Texas. There was no evidence of prior IPV's by Respondent. This was Respondent's first IPV for FAP. Therefore, Respondent is subject to a 12-month disqualification from receipt of FAP benefits.

OVERISSUANCE

Food Assistance:

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 2018), 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 (October 2017), pp. 5-7.

In this case, MDHHS testified that they began the FAP fraud period based upon Respondent's employment start date and applying the "10 10 12 Rule": FAP recipients who are not simplified reporters are required to report starting or stopping employment and changes in circumstance that potentially affect eligibility or benefit amount within ten days of receiving the first payment reflecting the change. BAM 105 (July 2020), p. 12; 7 CFR 273.10(b)(1)(i). MDHHS then has ten days to process the change and, if it results in a decrease in benefits, it gives the client 12 days before the negative action impacts the benefits issued. BAM 220 (January 2021), p. 7, 12. Therefore, MDHHS has determined that the FAP fraud period was January 1, 2021 through August 31, 2021. During this time, since Respondent was not a resident of Michigan, she was not entitled to receive any FAP benefits that were issued to her. Upon discovery of Respondent's

residency, MDHHS closed her FAP case effective August 31, 2021. From January 1, 2021 through August 31, 2021, Respondent received \$[REDACTED] in FAP benefits. Since Respondent was not eligible for these benefits, MDHHS is entitled to recoup \$[REDACTED] in overissued FAP benefits.

Medical Assistance:

MDHHS may initiate recoupment of an MA overissuance only due to client error or IPV, not when due to agency error. BAM 710 (January 2018), p. 1. A client error OI occurs when the client received more benefits than entitled to because the client gave incorrect or incomplete information to MDHHS. BAM 700, p. 7.

In this case, MDHHS alleges that Respondent failed to update when she was no longer a Michigan resident, causing an overissuance of MA benefits. Clients must report changes, such as changes in address to MDHHS within 10 days after the client is aware of them. BAM 105, pp. 12-13. A person must be a Michigan resident to receive MA issued by the MDHHS. BEM 220, p. 1. For MA purposes, an individual is a Michigan resident if living in Michigan except for a temporary absence. Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished. BEM 220, p. 1-2.

As discussed, MDHHS has shown that Respondent failed to report that she was no longer a Michigan resident, causing an OI of MA benefits in the amount of \$[REDACTED] from January 1, 2021 through November 30, 2021. Because Respondent failed to accurately and timely report her change in address and residency, MDHHS' evidence establishes that Respondent withheld information and as a result received MA benefits she was not entitled to.

The amount of a MA OI for an overissuance due to any reason other than unreported income or a change affecting need allowances is the amount of MA payments. BAM 710, pp. 1-2. MDHHS established that the State of Michigan paid \$[REDACTED] in MA payments to provide Respondent with MA coverage from January 1, 2021 through November 30, 2021, the period in which she was no longer considered to be a resident of the State of Michigan. Since Respondent was not eligible to for the MA benefits Michigan issued, MDHHS is entitled to to recoup \$[REDACTED]

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.

3. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED]
4. Respondent did receive an OI of MA benefits in the amount of \$ [REDACTED]

IT IS ORDERED that MDHHS initiate recoupment and/or collection procedures in accordance with MDHHS policy for \$ [REDACTED] in OI FAP benefits, less any amounts already recouped/collected for the fraud period.

IT IS FURTHER ORDERED that MDHHS initiate recoupment and/or collection procedures in accordance with MDHHS policy for \$ [REDACTED] in OI MA benefits, less any amounts already recouped/collected for the fraud period.

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



DN/dm

Danielle Nuccio
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
Amy Assante
Charlevoix County DHHS
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Policy-Recoupment

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Via-First Class Mail :

Respondent

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