



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 18, 2024
MOAHR Docket No.: 23-004607
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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] [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 March 19, 2024.

William Etienne, Regulation Agent of the Office of Inspector General (OIG), represented MDHHS. Respondent appeared and represented herself.

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. From July 1, 2020 to March 31, 2021, Respondent received \$ [REDACTED] in FAP benefits. (Exhibit A, pp. 94-98)

2. On April ■ 2020, Respondent submitted an Assistance Application for FAP and health care coverage benefits in Michigan for herself and her sons. Respondent reported she resided in ■ Michigan. (Exhibit A, pp. 10-18)
3. Respondent's signature on the Assistance Application certified that she read and understood the rights and responsibilities. This would include providing accurate information and timely reporting changes. (Exhibit A, pp. 10-26; Regulation Agent Testimony)
4. On May ■ 2020, a Notice of Case Action was issued to Respondent approving FAP benefits for the household of four. This Notice also reminded Respondent of the responsibility to report changes that may affect eligibility within 10 days. A blank change report form was included. (Exhibit A, pp. 27-34)
5. From May 13, 2020 to May 11, 2021, Respondent's Michigan issued FAP benefits were utilized mostly out of state in Texas, Arizona, and Florida with only a few transactions in Michigan. (Exhibit A, pp. 35-44)
6. Respondent rented an apartment in Texas for herself and her sons from April 30, 2020 to September 13, 2021. There was an addendum with a new lease term of May 7, 2020 to September 20, 2021. The Occupancy Dates indicate Respondent moved out effective October 26, 2021. (Exhibit A, pp. 45-89)
7. Respondent was aware of the responsibility to timely report any changes to the Department. (Exhibit A, pp. 10-34; Regulation Agent Testimony)
8. Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the reporting requirements during the relevant time period. (Exhibit A, pp. 90-91)
9. Respondent has no prior IPV disqualifications. (Exhibit A, p. 1)
10. On August ■ 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to report moving out of state and as a result, received FAP benefits from July 1, 2020 to March 31, 2021 (FAP fraud period) that Respondent was ineligible to receive. OIG requested that (i) Respondent repay 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. (Exhibit A, pp. 1-101)
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 (October 1, 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 based on a failure to report moving out of state, resulting in receiving a greater amount of FAP benefits from July 1, 2020 to March 31, 2021 (FAP fraud period) than Respondent was eligible to receive.

The Department has established that Respondent was aware of the responsibility to timely report any changes to the Department. Households are required to report changes in residence and the resulting change in shelter costs. 7 CFR 273.12(a)(1)(i)(D)(iii). Department

policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within 10 days. This includes changes with residence and income. BAM 105 (October 1, 2019), pp. 11-13. Respondent's signature on the Assistance Application certified that that she read and understood the rights and responsibilities. This would include providing accurate information and timely reporting changes. The Notice of Case Action also reminded Respondent of the responsibility to report changes that may affect eligibility within 10 days. (Exhibit A, pp. 10-34; Regulation Agent Testimony). Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the reporting requirements. (Exhibit A, pp. 90-91).

On April [REDACTED] 2020, Respondent submitted an Assistance Application for FAP and health care coverage benefits in Michigan for herself and her sons. Respondent reported she resided in Westland, Michigan. (Exhibit A, pp. 10-18). On May [REDACTED] 2020, a Notice of Case Action was issued to Respondent approving FAP benefits for the household of four. (Exhibit A, pp. 27-34).

Respondent rented an apartment in Texas for herself and her sons from April 30, 2020 to September 13, 2021. There was an addendum with a new lease term of May 7, 2020 to September 20, 2021. The Occupancy Dates indicate Respondent moved out effective October 26, 2021. (Exhibit A, pp. 45-89). There was no evidence that Respondent reported moving out of state to the Department in accordance with the reporting responsibilities. (Exhibit A, p. 92).

Respondent asserted that she was going back and forth. Respondent testified that her lease in Michigan did not end until October 3, 2020 and her children continued to attend school in Michigan until October 12, 2020. Respondent submitted an email she sent to the school on October 11, 2020 disenrolling the children. Respondent also submitted a [REDACTED] Move Out Checklist. However, Respondent testified that school was virtual due to the pandemic, so the children were able to attend from out of state. Further, the [REDACTED] [REDACTED] Out Checklist was not dated or signed and did not even show the resident name or apartment number. (Exhibit 1; Respondent Testimony)

The evidence was sufficient to establish that Respondent failed to timely report her move out of state to the Department within 10 days, as required by policy. On April [REDACTED] 2020, Respondent leased an apartment out of state. Respondent's testimony indicated that while the children were still enrolled in school in Michigan, it was virtual due to the pandemic, and they were able to attend while out of state. Respondent did not provide sufficient evidence to establish when her lease in Michigan ended. The FAP purchase history also supports that Respondent had moved out of state. Respondent's change in residency was utilized to re-determine FAP eligibility during the fraud period. Respondent's failure to timely and accurately report the change in residency resulted in an OI of 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. Respondent has no prior IPV disqualifications. (Exhibit A, p. 1). Because this was Respondent's first IPV, 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, (October 1, 2018), 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. 7 CFR 273.18(c)(1); BAM 720, p. 8; BAM 715 (October 1, 2017), p. 6; BAM 705 (October 1, 2018), p. 6.

In this case, MDHHS alleged that Respondent was overissued FAP benefits totaling \$ [REDACTED] during the fraud period. From July 1, 2020 to March 31, 2021, Respondent received \$ [REDACTED] in FAP benefits. (Exhibit A, pp. 94-98). The Department noted that the 15% FAP benefit increase and pandemic insurance benefits, which total \$ [REDACTED] are not subject to recoupment. (Exhibit A, p. 99). When the change in residency was utilized to redetermine eligibility, Respondent was not eligible to receive FAP benefits during the fraud period. Therefore, MDHHS is entitled to repayment from Respondent of \$ [REDACTED] 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.
3. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED]

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

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

CL/dm



Colleen Lack
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**

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Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

Respondent
[REDACTED]
[REDACTED]
[REDACTED]