



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 14, 2024
MOAHR Docket No.: 23-005913
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 April 8, 2024.

James Disser, Regulation Agent of the Office of Inspector General (OIG), represented MDHHS.

Respondent appeared and represented himself.

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. In an Assistance Application Respondent submitted to MDHHS on October [REDACTED] 2019, MDHHS notified Respondent of the FAP usage responsibilities. This includes

ensuring that FAP benefits are not used by unauthorized persons, must only be used to purchase eligible food for the FAP household members, and that buying or selling FAP benefits was prohibited. (Exhibit A, pp. 8-18)

2. During the fraud period, Respondent received FAP for a household of three, himself and two minor children. (Exhibit A, pp. 4, 9-10, and 19-21)
3. On January [REDACTED] 2022, Respondent's Electronic Benefit Transfer (EBT) card, was used at Sam's Club for \$[REDACTED] (Exhibit A, pp. 22-25)
4. Images from the stores show Respondent did not make the purchase on January [REDACTED] 2022. The purchase at Sam's club was made under the membership of [REDACTED] [REDACTED] The images show [REDACTED] [REDACTED] made the purchase with Respondent's EBT card. (Exhibit A, pp. 4 and 26-32)
5. The Department determined that [REDACTED] [REDACTED] fraudulently obtained EBT cards from at least 30 recipients and used those cards to purchase thousands of dollars in food products, which he prepared for resale. (Exhibit A, p. 4)
6. [REDACTED] [REDACTED] reported that he purchased all of the EBT cards he used, rather than stealing them. (Exhibit A, p. 4)
7. Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the FAP usage responsibilities during the fraud period. (Exhibit A, pp. 37-38)
8. Respondent has no prior FAP IPV disqualifications. (Exhibit A, pp. 39-40)
9. On September 19, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally allowed others to use his EBT card to purchase food items not intended for consumption by his family, specifically a transaction on January 12, 2022 (fraud period). OIG requested that (i) Respondent repay MDHHS as a recipient claim the total of the transaction \$[REDACTED] and (ii) Respondent be disqualified from receiving FAP benefits for a period of 12 months due to committing an IPV by trafficking. (Exhibit A, pp. 1-40)
10. 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

In this case, MDHHS alleges that Respondent committed an IPV based on intentionally allowed others to use his EBT card to purchase food items not intended for consumption by his family, and as a result, Respondent is responsible for the unauthorized use of FAP benefits, specifically a transaction on January [REDACTED] 2022 (fraud period).

The Department has established that Respondent was aware of the responsibilities to ensure that FAP benefits are not used by unauthorized persons and must only be used to purchase eligible food for the FAP household members. Food program benefits may only be used by the household, or other persons the household selects, to purchase eligible food for the household. 2 CFR 274.4(a).

Respondent's signature on the Assistance Application certified that he read and understood the rights and responsibilities. This includes ensuring that FAP benefits are not used by unauthorized persons, must only be used to purchase eligible food for the FAP household members, and that buying or selling FAP benefits was prohibited. (Exhibit A, pp. 8-18). Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the FAP usage responsibilities during the fraud period. (Exhibit A, pp. 37-38).

The Department asserted that Respondent intentionally allowed others to use his EBT card to purchase food items not intended for consumption by his family, and as a result, Respondent is responsible for the unauthorized use of FAP benefits, specifically a transaction on January █ 2022 (fraud period). On January █ 2022, Respondent's EBT card, was used at Sam's Club for \$█ (Exhibit A, pp. 22-25). Images from the stores show Respondent did not make the purchase on January █ 2022. The purchase at Sam's club was made under the membership of █. The images show █ made the purchase with Respondent's EBT card. (Exhibit A, pp. 4 and 26-32). The Department determined that █ fraudulently obtained EBT cards from at least 30 recipients and used those cards to purchase thousands of dollars in food products, which he prepared for resale. █ reported that he purchased all of the EBT cards he used, rather than stealing them. (Exhibit A, p. 4).

Respondent testified that he did not give permission for his EBT card to be used and he reported the EBT card stolen numerous times. Respondent had his identity stolen and did not traffic his EBT card. (Respondent Testimony).

The Regulation Agent reviewed Respondent's case and found that Respondent reported EBT cards as lost or stolen on March █ 2018, August █ 2018, October █ 2021, and January █ 2023. (Regulation Agent Testimony). The EBT card used for the January █ 2022 transaction, which ends in █ was not reported as lost until January █ 2023. (Exhibit A, p. 25; Regulation Agent Testimony). This was almost a year after the transaction at issue.

The Department presented sufficient evidence to establish that the food purchased in the transaction on v January █ 2022 was not purchased by Respondent and was not for Respondent's household's use. There was no evidence that Respondent had added anyone as an authorized representative or had reported his EBT card as lost or stolen at the time of the January █ 2022 transaction. The items and quantities purchased were indicative of resale or restaurant use. (Exhibit A, pp. 4, and 22-32; Regulation Agent Testimony). 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 FAP IPV disqualifications. (Exhibit A, pp. 39-40). 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, (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, Respondent received FAP for a household of three, himself and two minor children. (Exhibit A, pp. 4, 9-10, and 19-21). On January [REDACTED] 2022, Respondent's Electronic Benefit Transfer (EBT) card, was used at Sam's Club for \$[REDACTED] (Exhibit A, pp. 22-25). The Department presented sufficient evidence to establish that the food purchased in the transaction on January [REDACTED] 2022 was not purchased by Respondent and was not for Respondent's household's use. There was no evidence that Respondent had added anyone as an authorized representative or had reported his EBT card as lost or stolen at that time. The items and quantities purchased were indicative of resale or restaurant use. (Exhibit A, pp. 4, and 22-32; Regulation Agent Testimony).

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/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
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Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

Respondent
[REDACTED]
[REDACTED]
[REDACTED]