



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
DIRECTOR

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Date Mailed: June 12, 2024
MOAHR Docket No.: 23-006862
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Linda Jordan

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

The Michigan Department of Health and Human Services (MDHHS or Department) requested a hearing alleging that Respondent ██████████ 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 May 14, 2024. Jacqualian Yancey Turner, Regulation Agent of the Office of Inspector General (OIG), represented MDHHS. Respondent appeared and represented himself. MDHHS' Hearing Packet was admitted at the hearing as MDHHS Exhibit A, pp. 1-45.

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 FAP benefits?
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 ██████████ 2022, Respondent applied for FAP benefits for a household of two, including ██████████ (Son) (Exhibit A, pp. 8-10). Respondent reported that he was receiving disability benefits and that he had a physical/mental/emotional health condition (Exhibit A, p. 11). Respondent signed the application electronically (Exhibit A, p. 8).

2. On or about ██████████ 2022, Son moved out of Respondent's home (Exhibit A, pp. 1, 25).
3. On ██████████ 2022, Respondent applied for Medicaid benefits, reporting a household of one (Exhibit A, pp. 20-24). Respondent signed the application electronically (Exhibit A, p. 24).
4. From October 1, 2022, to December 31, 2022, Respondent received \$1,548.00 in FAP benefits for a two-person FAP group.
5. Respondent was aware of the responsibility to report truthful and accurate information regarding his circumstances.
6. Respondent reported that he had a physical or mental impairment that limited his ability to accurately report eligibility information.
7. Respondent has no prior FAP IPV disqualifications.
8. On October 9, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to report a change in his household size and as a result received FAP benefits from October 1, 2022, to December 31, 2022 (alleged fraud period) that Respondent was ineligible to receive. OIG requested that (i) Respondent repay \$705.00 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.
9. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Service 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 client has had two or more client errors previously, or the alleged fraud is committed by a state government employee. BAM 720 (October 2017), p. 5.

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 alleged that Respondent committed an IPV based on failing to report that Son left his household to MDHHS in a timely manner. Clients are required to report changes in circumstances that may affect eligibility or benefit levels, including persons in the home, within ten days after the client is aware of the change. BAM 105 (April 2022), pp. 11-12.

MDHHS alleged that on December 2, 2022, Respondent reported that Son left the household on August 31, 2022 (Exhibit A, p. 25). This was untimely because Respondent was required to report the change within ten days after becoming aware of the change. To show that Respondent committed an IPV, MDHHS introduced Respondent's January 24, 2022, and July 2, 2022 benefits application (Exhibit A, pp. 13, 19). MDHHS alleged that by signing the applications, Respondent acknowledged his rights and responsibilities as a beneficiary to report changes to MDHHS.

At the hearing, Respondent did not dispute that Son moved out of the home on August 31, 2022. However, he credibly testified that he suffered from multiple impairments as a result of an automobile accident, including vision loss. Respondent testified that he could not read or write and that he required assistance to complete paperwork. He further testified that he had a person helping him with his paperwork, but that the help was inconsistent. Respondent's testimony was corroborated by the January 14, 2022 benefits application in which he reported the accident and resulting nerve damage (Exhibit A, p. 13).

Based on the complete record, MDHHS' evidence of an IPV is insufficient to rebut Respondent's credible testimony regarding his disabilities. Notably, the benefits applications predated Son moving out of the house and MDHHS did not allege that

Respondent made a false statement regarding his household size on any form or in any interview with MDHHS. The documents show that MDHHS attempted to inform Respondent of his reporting responsibilities; however, they do not prove that he acted with the requisite intent to support an IPV. Additionally, the record shows that MDHHS had knowledge of his impairments, which prevented Respondent from understanding and complying with his reporting responsibilities.

Therefore, MDHHS has not 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 FAP benefits 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 not established by clear and convincing evidence that Respondent committed an IPV. Therefore, Respondent is not subject to a FAP disqualification.

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 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.

In this case, MDHHS alleged that Respondent was overissued FAP benefits totaling \$705.00 during the alleged fraud period. Although there was insufficient evidence to find an IPV, the record shows that Respondent did not properly report a change in his household, which constitutes a client error. MDHHS is required to pursue FAP OIs in the event of client error. *See generally* BAM 715 (October 2017). MDHHS presented evidence that Respondent received \$1,548.00 in FAP benefits during the alleged fraud period. Because Respondent had a household of one, rather than a household of two, he was only eligible to receive \$843.00 in FAP benefits during that time. Subtracting \$843.00 from \$1,548.00 equals \$705.00. The record also shows that Respondent received supplemental \$95.00 Emergency Allotments (EA) during those months due to COVID-19-related policies (Exhibit A, p. 39). MDHHS did not request to recoup the \$95.00 EA payments.

Therefore, MDHHS is entitled to repayment from Respondent of \$705.00 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 not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent is not subject to a 12-month disqualification from FAP.
3. Respondent did receive an OI of FAP benefits in the amount of \$705.00.

IT IS ORDERED that MDHHS initiate recoupment and/or collection procedures in accordance with MDHHS policy for a FAP OI in the amount of \$705.00, less any amounts already recouped/collected for the fraud period.

IT IS FURTHER ORDERED that MDHHS' request to disqualify Respondent from FAP for a period of 12 months is DENIED.



LJ/pt

Linda Jordan
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

