



GRETCHEN WHITMER  
GOVERNOR

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

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DIRECTOR

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Date Mailed: May 28, 2024  
MOAHR Docket No.: 23-007031  
Agency No.: ██████████  
Petitioner: OIG  
Respondent: ██████████

**ADMINISTRATIVE LAW JUDGE: Danielle R. Harkness**

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION**

The Michigan Department of Health and Human Services (Department) requested a hearing alleging that Respondent, ██████████ committed an intentional program violation (IPV). Pursuant to the Department's request and in accordance with MCL 400.9, 7 CFR 273.16, and 7 CFR 273.18, this matter is before the undersigned Administrative Law Judge. After due notice, a hearing was held via telephone conference on May 21, 2024. Patrick Richard, Senior Agent of the Office of Inspector General (OIG), represented the Department. Respondent appeared and represented herself.

A 144-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

**ISSUES**

1. Did the Department 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 the Department is entitled to recoup and/or collect as a recipient claim?

**FINDINGS OF FACT**

The Administrative Law Judge, based on the clear and convincing evidence on the whole record, finds as material fact:

1. Respondent submitted an assistance application on ██████████ 2019. Respondent reported her phone number as ██████████. Exhibit A, pp. 49-57.
2. Respondent submitted an assistance application on ██████████ 2022. Respondent reported her phone number as ██████████. *Id.* at pp. 32-44.

3. During the [REDACTED] 2023, and [REDACTED] 2023, interview, the rights and responsibilities were explained to Respondent. *Id.* at pp. 59-72.
4. [REDACTED] (LSV) was a FAP recipient who received benefits for a household size of 1. *Id.* at p. 28.
5. LSV passed away on [REDACTED] 2022. *Id.* at p. 9.
6. From [REDACTED] 2022, to [REDACTED] 2022, LSV's FAP benefits were utilized for multiple transactions totaling \$1,207.46. *Id.* at pp. 10-13; 20-24.
7. Between [REDACTED] 2022, and [REDACTED] 2022, Respondent's phone number was used to access LSV's EBT card numerous times. *Id.* at pp. 4; 17.
8. On September 24, 2022, Respondent's phone number was used to change the PIN for LSV's EBT Card. *Id.* at pp. 14-15.
9. Respondent does not have an apparent physical or mental impairment that would limit the understanding or ability to comply with the rights and responsibilities as a FAP recipient. *Id.* at p. 47; Respondent Testimony; Senior Regulation Agent Testimony.
10. Respondent has no prior FAP IPV disqualifications. *Id.* at pp. 74-75.
11. On October 13, 2023, the Department filed a hearing request alleging that Respondent intentionally used FAP benefits of a deceased client from [REDACTED] [REDACTED] 2022, to [REDACTED], 2022, (fraud period), which Respondent was ineligible to use. The Department requested that (i) Respondent repay \$1,207.46 for FAP benefits that Respondent was ineligible to use and (ii) Respondent be disqualified from receiving FAP benefits for a period of 12 months due to committing an IPV. *Id.* at p. 1.

### **CONCLUSIONS OF LAW**

Department policies are contained in the MDHHS Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The 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, the Department 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, Department 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, the Department alleges that Respondent committed an IPV by intentionally using FAP benefits of a deceased client from [REDACTED] 2022, to [REDACTED] 2022 (fraud period), which Respondent was ineligible to use.

The Department has established that Respondent was aware of the rights and responsibilities as a FAP recipient, including not using or attempting to use FAP benefits or Bridge cards that belong to another household. 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). During the July 17, 2023, and the July 24, 2023, interview, the rights and responsibilities were explained to Respondent. Exhibit A, pp. 59-72. Respondent does not have an apparent physical or mental impairment that would limit the understanding or ability to comply with her rights and responsibilities as a FAP recipient. *Id.* at p. 47; Senior Regulation Agent Testimony.

LSV was a FAP recipient who received benefits for a household size of 1. *Id.* at p. 28. LSV passed away on [REDACTED] 2022. *Id.* at p. 9. From [REDACTED], 2022, to [REDACTED] 2022, LSV's FAP benefits were utilized for multiple transactions totaling \$1,207.46. *Id.* at pp. 10-13; 20-24. Respondent submitted assistance applications on [REDACTED] 2019, and [REDACTED] 2022. Respondent reported her phone number as [REDACTED] Exhibit A, pp. 32-44; 49-57. Between [REDACTED] 2022, and [REDACTED] 2022, Respondent's phone number was used to access LSV's EBT card numerous times. *Id.* at p. 17. On September 24, 2022, Respondent's phone number was used to

change the PIN for LSV's EBT Card. *Id.* at pp. 14-15. Any purchases made after LSV's death were clearly not for LSV's use.

At the hearing, Respondent acknowledged that she utilized LSV's FAP benefits as alleged by the Department. Here, the Department 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, the Department has established by clear and convincing evidence that Respondent committed an IPV. Respondent has no prior FAP IPV disqualifications. Exhibit A, pp. 74-75. 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, the Department 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, Respondent was overissued FAP benefits totaling \$1,207.46 during the fraud period because she utilized LSV's EBT card for multiple transactions totaling \$1,207.46. Exhibit A at pp. 10-13; 20-24. There is sufficient evidence to find that Respondent utilized LSV's FAP benefits after LSV passed away. Therefore, the Department is entitled to repayment from Respondent of \$1,207.46 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. The Department 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 received an OI of FAP benefits in the amount of \$1,207.46.

**IT IS ORDERED** that the Department initiate recoupment and/or collection procedures in accordance with Department policy for a FAP OI in the amount of \$1,207.46, 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.



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**Danielle R. Harkness**  
Administrative Law Judge

DH/pt

**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

PO Box 30062

Lansing, MI 48909-7562

**MDHHS-OIG-HEARINGS@michigan.gov**

**DHHS**

Denise Key-McCoggle

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Redford, MI 48239

**MDHHS-Wayne-15-Greydale-Hearings@michigan.gov**

**Interested Parties**

Wayne County DHHS

Policy Recoupment

N. Stebbins

MOAHR

**Via-First Class Mail:**

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