



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
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Date Mailed: July 25, 2024
MOAHR Docket No.: 23-007055
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 June 25, 2024. Patrick Richard, 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). MDHHS' Hearing Packet was admitted at the hearing as MDHHS Exhibit A, pp. 1-46.

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. Has MDHHS established a recipient claim against Respondent for \$1,836.09 based on the unauthorized use of FAP benefits?

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 ██████████, 2023, Respondent's father, ██████████ (Decedent), passed away (Exhibit A, p. 8). At the time of his death, Decedent was receiving FAP benefits for

a household of one and did not have an authorized representative (Exhibit A, pp. 9-11).

2. From June 13, 2023 to August 23, 2023, Decedent's Electronic Benefits Transfer (EBT) card was used at various retailers for purchases amounting to \$1,836.09 in FAP benefits (Exhibit A, p. 13). Several purchases were made using Respondent's Instacart account and were delivered to Respondent's address in Des Moines, IA (Exhibit A, pp. 21-22).
3. No evidence was presented that Respondent had an apparent physical or mental impairment that would limit the understanding of FAP rules and regulations.
4. Respondent has no prior FAP IPV disqualifications.
5. On October 11, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally used Decedent's FAP benefits after his death from May 1, 2023 to August 31, 2023 (alleged fraud period). OIG requested that (i) Respondent repay \$1,836.09 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.
6. 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

IPV is defined, in part, as having intentionally "committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT [electronic benefits transfer] cards." 7 CFR 273.16(c)(2) and (e)(6). Trafficking includes buying, selling, stealing, or otherwise effecting, or attempting to buy, sell, steal or otherwise effect, "an exchange of SNAP benefits issued and accessed via EBT cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone" 7 CFR 271.2.

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 (October 2017), 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. 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).

In this case, MDHHS alleged that Respondent committed an IPV by using Decedent’s EBT card after his death.

FAP benefits may only be used by the household, or other persons that the household selects, to purchase eligible food items for the household. 7 CFR 274.7(a). At application, MDHHS is required to determine an individual’s household, also known as FAP group composition, based on who lives with the individual, the relationships of the people in the household, and whether the individuals purchase and prepare food together. See *generally*, BEM 212 (January 2022). An individual who is not part of the FAP group is not entitled to redeem the group’s FAP benefits, unless that person has been designated by a group member as an Authorized Representative (AR). BAM 110 (October 2022), p. 9. An AR assumes all the responsibilities of the client, including the responsibility to use benefits lawfully. Intentionally engaging in the unauthorized use of FAP benefits is committing an act that is a violation of SNAP and constitutes an IPV. 7 CFR 273.16(c)(2).

The record shows that Decedent passed away on [REDACTED] 2023. At the time of his death, he was receiving FAP benefits for a household of one and did not have an AR on his case. Respondent was not part of Decedent’s FAP group or his AR. Several purchases were made using Decedent’s EBT card after his death, including purchases using Respondent’s Instacart account. At the hearing, OIG testified that it interviewed Respondent and Respondent admitted to using Decedent’s EBT card (Exhibit A, p. 4). According to OIG, Respondent stated that Decedent sent him a photograph of the EBT card prior to his death, so that Respondent could use it for himself and his child (Exhibit A, p. 4). Respondent did not appear at the hearing to provide testimony to the contrary. Respondent’s statements, whether considered an admission by a party-opponent or the statement of an unavailable declarant against the declarant’s pecuniary and proprietary interest, were admissible at the hearing. MRE 801(d)(2); MRE 804(a)(5) and (b)(3).

Based on Respondent’s admission and the documentation presented by MDHHS, MDHHS has presented sufficient evidence to form a firm belief that Respondent used Decedent’s FAP benefits after his death. This action constitutes a violation of FAP policy because Respondent was not in Decedent’s FAP group, and he did not have authorization to use his 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. There was no evidence of prior IPV's by Respondent. Because this was Respondent's first IPV for FAP, Respondent is subject to a 12-month disqualification from the receipt of FAP benefits.

Overissuance

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (October 2018), p. 1. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. Id. For FAP benefits, an overissuance is also the amount of benefits trafficked (stolen, traded, bought or sold) or attempted to be trafficked. Id. Individuals who commit an act that constitutes a violation of FAP must repay the food benefits. BAM 401E (April 2022), p. 3.

Here, MDHHS seeks repayment from Respondent of \$1,836.09, which represents the total amount of Decedent's FAP benefits that Respondent admitted to redeeming after Decedent's death. MDHHS presented evidence to show that several transactions were made using Decedent's EBT card after his death. Based on Respondent's admission and the evidence described above, MDHHS has established by clear and convincing evidence that the person using the EBT card was Respondent. Therefore, the evidence presented is sufficient to establish a valid recipient claim against Respondent for \$1,836.09.

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 \$1,836.09.

IT IS ORDERED that MDHHS initiate recoupment and/or collection procedures in accordance with MDHHS policy for a FAP OI in the amount of \$1,836.09, 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.

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

