



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

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: June 18, 2024
MOAHR Docket No.: 23-007057
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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 [REDACTED] committed an intentional program violation (IPV) by trafficking Food Assistance Program (FAP) benefits. Pursuant to MDHHS' request for hearing and 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 23, 2024. James Disser, 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). MDHHS' Hearing Packet was admitted at the hearing as MDHHS Exhibit A, pp. 1-38.

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 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 [REDACTED] 2023, [REDACTED] (Decedent), passed away (Exhibit A, p. 8). At the time of her death, Decedent was receiving FAP benefits for a household of one and did not have an authorized representative (Exhibit A, p. 9).

2. From August 5, 2023, to September 9, 2023, Decedent's Electronic Benefits Transfer (EBT) card was used at to make purchases at various retailers (Exhibit A, p. 12). The transactions amounted to \$562.80 in FAP benefits (Exhibit A, p. 12). The transactions included a purchase made at BJ's Wholesale Club for \$73.83 using Respondent's membership identification number (Exhibit A, pp. 12-16).
3. Respondent previously received FAP benefits (Exhibit A, p. 27)
4. No evidence was presented that Respondent had an apparent physical or mental impairment that would limit the understanding of FAP rules and regulations.
5. Respondent has no prior FAP IPV disqualifications (Exhibit A, p. 31).
6. On October 11, 2023, MDHHS' OIG filed a hearing request alleging that Respondent wrongfully used Decedent's FAP benefits after her death from August 1, 2023, to September 30, 2023 (alleged fraud period). OIG requested that (i) Respondent repay \$562.80 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.
7. 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), 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 400.3015.

Intentional Program Violation (IPV)

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 her 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 (April 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 ████████ 2023 (Exhibit A, p. 8). At the time of her death, she was receiving FAP benefits for a household of one and did not have an AR on her case (Exhibit A, p. 9). Respondent was not part of Decedent’s FAP group or her AR. Decedent’s EBT card was used for multiple transactions after her death, including a transaction at BJ’s Wholesale Club using Respondent’s membership identification number (Exhibit A, pp. 12-16).

At the hearing, MDHHS testified that it interviewed Respondent in conjunction with its investigation and Respondent admitted to using Decedent’s EBT card after her death to pay for food for her memorial service (Exhibit A, p. 4). 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. Michigan Rules of Evidence (MRE) 801(d)(2); MRE 804(a)(5) and (b)(3).

Under the facts presented, MDHHS has established by clear and convincing evidence that Respondent engaged in the unauthorized use of FAP benefits by using Decedent’s benefits after her death. Thus, Respondent did commit an IPV.

IPV Disqualification

MDHHS requested that Respondent be disqualified from receiving FAP for 12 months. 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. No evidence was presented that Respondent had a prior FAP IPV. Therefore, Respondent is subject to a 12-month 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)(1); BAM 700 (October 2018), p. 1.

Here, MDHHS seeks repayment from Respondent of \$562.80, which represents the total amount of Decedent's FAP benefits that Respondent used after Decedent's death. MDHHS presented evidence to show that various transactions were made using Decedent's EBT card after her death. As described in more detail above, MDHHS also presented documents to show that the person using the EBT card was Respondent. Additionally, Respondent admitted to using Decedent's FAP benefits. Therefore, the evidence presented by MDHHS, in conjunction with Respondent's testimony, is sufficient to establish a valid recipient claim against Respondent for \$562.80.

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 \$562.80.

IT IS ORDERED that MDHHS initiate recoupment and/or collection procedures in accordance with MDHHS policy for a FAP OI in the amount of \$562.80, 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.



Linda Jordan
Administrative Law Judge

LJ/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

Susan Noel
Wayne-Inkster-DHHS
26355 Michigan Ave
Inkster, MI 48141
MDHHS-Wayne-19-Hearings@michigan.gov

Interested Parties

Wayne County DHHS
Policy Recoupment
N. Stebbins
MOAHR

Via-First Class Mail:

Respondent

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