



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: February 10, 2023
MOAHR Docket No.: 22-002270-RECON
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION ON REHEARING FOR INTENTIONAL PROGRAM VIOLATION

The Michigan Department of Health and Human Services (MDHHS or the 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 January 11, 2023.

Monica Tardiff, Regulation Agent of the Office of Inspector General (OIG), represented MDHHS.

Respondent appeared on his own behalf.

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. From May 1, 2021 to June 30, 2021, Respondent received FAP benefits for a one-person household. (Exhibit B, p. 48)
2. On September 30, 2016, Respondent submitted an Assistance Application. Respondent's signature on the Assistance Application certified that he read and understood the rights and responsibilities. This would include timely reporting changes and that FAP benefits may only be used to purchase food for the household members included in the FAP group. (Exhibit B, pp. 10-38)
3. An Offender Tracking Information System (OTIS) record indicates Respondent was incarcerated as of May 7, 2021 and the earliest release date was September 30, 2021. (Exhibit B, pp. 39-40)
4. From [REDACTED] 2021 to [REDACTED] 2021 Respondent's FAP benefits were utilized for numerous purchases totaling [REDACTED] (Exhibit B, p. 44)
5. Respondent was aware of the responsibility to timely report changes to the Department and that FAP benefits may only be used to purchase food for the household members included in the FAP group. (Exhibit B, pp. 20-38 and 46-47)
6. Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the change reporting requirements. (Exhibit B, p. 50)
7. Respondent has no prior FAP IPV disqualifications. (Exhibit B, pp. 1 and 5-6)
8. On May 24, 2022, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to timely report that he was incarcerated and as a result, Respondent is responsible for unauthorized FAP transactions from [REDACTED] 2021 to [REDACTED] 2021 (fraud period) as his FAP benefits were improperly used during his incarceration. OIG requested that (i) Respondent repay [REDACTED] 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. (Exhibit A, pp. 1-17 and Exhibit B, pp. 1-52)
9. Respondent acknowledges that he gave his family permission to use his EBT card while he was in jail. (Exhibit A, p. 4; Respondent Testimony)
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 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 alleges that Respondent committed an IPV based on failing to timely report that he was incarcerated resulting in Respondent being responsible for unauthorized FAP transactions from May 22, 2021 to June 10, 2021 (fraud period) as his FAP benefits were improperly used during his incarceration.

The Department has established that Respondent was aware of the responsibility to timely report changes to the Department and that FAP benefits may only be used to purchase food for the household members included in the FAP group. Program benefits may be used only by the household, or other persons the household selects, to purchase eligible food for the household. 7 CFR 274.7 (a). Respondent's signature on the September 30, 2016 Assistance Application certified that he read and understood the rights and responsibilities. This would include timely reporting changes and that FAP benefits may only be used to purchase food for the household members included in the

FAP group. (Exhibit B, pp. 20-38). Further, Department policy directs that clients be provided with written materials when they become eligible for assistance addressing appropriate use of benefits, which includes not selling, trading, or giving away FAP benefits, the PIN number, or the EBT card (Bridge Card). (Exhibit B, pp. 45-47). Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the change reporting requirements. (Exhibit B, p. 50).

Respondent acknowledged that he gave his family permission to use his Bridge card while he was in jail. Respondent indicated the circumstances where he went to jail were traumatic and he thought it was ok for them to use the benefits he already earned. Petitioner requested leniency. (Exhibit A, p. 4; Respondent Testimony). However, this Administrative Law Judge must review the Department's determination under the applicable regulations and policies and has no authority to make any exceptions. As indicated above, Respondent's signature on the September 30, 2016 Assistance Application certified that he read and understood the rights and responsibilities. This would include timely reporting changes and that FAP benefits may only be used to purchase food for the household members included in the FAP group. (Exhibit B, pp. 20-38).

The Department asserted that Respondent failed to timely report that he was incarcerated and his FAP benefits were improperly used during his incarceration. An OTIS record indicates Respondent was incarcerated as of May 7, 2021 and the earliest release date was September 30, 2021. (Exhibit B, pp. 39-40). There was no evidence that Respondent reported that he was incarcerated to the Department. Further, [REDACTED] 2021 to [REDACTED] 2021 Respondent's FAP benefits were utilized for numerous purchases totaling [REDACTED] (Exhibit B, p. 44). Those purchases could not have been for eligible food for Respondent, who was the only household member for his FAP case. 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 B, pp. 1 and 5-6). 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. From [REDACTED] 2021 to [REDACTED] 2021, Respondent received FAP benefits for a one-person household. (Exhibit B, p. 48). An OTIS record indicates Respondent was incarcerated as of May 7, 2021 and the earliest release date was September 30, 2021. (Exhibit B, pp. 39-40). However, from [REDACTED] 2021 to [REDACTED] 2021 Respondent's FAP benefits were utilized for numerous purchases totaling [REDACTED] (Exhibit B, p. 44). Those purchases could not have been for eligible food for Respondent. Further, Respondent acknowledged that he gave his family permission to use his EBT card while he was in jail. (Exhibit A, p. 4; Respondent Testimony).

Therefore, MDHHS is entitled to repayment from Respondent of [REDACTED] in overissued FAP benefits. The Regulation Agent testified that the OI has been repaid in full.

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/tlf



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
OIG
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Lansing, MI 48909-7562
**MDHHS-OIG-
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Via-First Class Mail :

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