



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 3, 2023
MOAHR Docket No.: 23-000640
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Danielle Nuccio

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

The Michigan Department of Health and Human Services (MDHHS or the Department) requested a hearing alleging that Respondent Genesis Colon 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 July 17, 2023. Joseph Gregurek, 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).

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?

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 February 5, 2021, Respondent applied for food assistance benefits issued by the state of Wisconsin.
 - a. Respondent reported residing at a Wisconsin address.
 - b. Respondent reported being a resident of Wisconsin.
 - c. Prior to submission of the application, Respondent must review rights and responsibilities as a benefit recipient.

(Exhibit A, pp. 31-48).

2. On March █ 2021, Respondent applied for FAP benefits for a two-person group.
 - a. Respondent reported residing at a Michigan address.
 - b. Respondent indicated that the household had not received benefits from another state in the last 30 days.
 - c. Prior to submission of the application, Respondent must agree that the information that she has provided to MDHHS is true to the best of her belief under penalty of perjury and must review rights and responsibilities as a benefit recipient.

(Exhibit A, pp. 10-17).

3. On March 10, 2021, MDHHS interviewed Respondent as part of the FAP application process. Respondent confirmed the information submitted in her application. As part of the interview, rights and responsibilities are explained to Respondent by MDHHS (Exhibit A, pp. 27-29).
4. On March 16, 2021, MDHHS issued a Notice of Case Action to Respondent informing her that she was eligible for FAP benefits for a group size of two and reminding her of her obligation to report changes in household circumstances to MDHHS within ten days (Exhibit A, pp. 18-26).
5. From January 2021 through July 2021, Respondent received and utilized food assistance benefits issued by the state of Wisconsin (Exhibit A, pp. 49-61).
6. From March 5, 2021 through July 31, 2021, Respondent received and utilized \$█ in FAP benefits in Michigan (Exhibit A, pp. 62-64).
7. Respondent does not have an apparent physical or mental impairment that would limit the understanding or ability to accurately report her circumstances.
8. Respondent has no prior FAP IPV disqualifications.
9. On February 2, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally received and spent duplicate food assistance benefits in Michigan and Wisconsin. As a result, Respondent received FAP benefits from March 5, 2021 through July 31, 2021 (fraud period) that she was ineligible to receive. OIG requested that Respondent be disqualified from receiving FAP benefits for a period of 12 months due to committing an IPV. OIG stated that the FAP overissuance amount, which exceeded \$500, was previously established and is not at issue in this case.
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 2017), pp. 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 the receipt of concurrent food assistance benefits issued by Michigan and Wisconsin. A person cannot receive FAP in more than one state for any month. BEM 222 (October 2018), pp. 3. MDHHS may verify out-of-state benefit receipt by: (i) DHS-3782, Out-of-State Inquiry; (ii) letter or document from the other state; or (iii) collateral contact with the state. BEM 222, p. 3-4; 7 CFR 273.2(f)(vi).

Federal Regulations with respect to residency requirements for FAP recipients provide in relevant part:

- (a) A household shall live in the State in which it files an application for participation. The State agency may also require a household to file an application for participation in a specified project area (as defined in § 271.2 of this chapter) or office within the State. *No individual may participate as a member of more than one household or in more than one project area, in any month, unless an individual is a resident of a shelter for battered women and children as defined in § 271.2 and was a member of a household containing the person who had abused him or her.*

CFR 273.3 (emphasis added).

Here, MDHHS presented evidence that Respondent received concurrent food assistance from Michigan and Wisconsin. On February █ 2021, Respondent applied for food assistance issued from Wisconsin, reporting that she was a Wisconsin resident. On March █ 2021, Respondent applied for FAP issued by Michigan, reporting that she resides at a Michigan address and has not received food assistance from another state in the last 30 days.

Respondent received Wisconsin-issued food assistance from October 2020 through July 2021 (see Exhibit A, pp. 49-52). Respondent received Michigan-issued FAP from March 5, 2021 through July 31, 2021. Respondent utilized food assistance from both states during the fraud period.

Upon review, MDHHS has presented sufficient evidence that Respondent received food assistance issued by two different states during the same time period. The receipt of concurrent receipt of benefits is not only contrary to policy but establishes that Respondent had the requisite intent to fraudulently obtain Michigan-issued FAP benefits that she would otherwise not be eligible to receive.

Therefore, MDHHS has presented clear and convincing evidence that Respondent committed an IPV.

IPV Disqualification

MDHHS requested that Respondent be disqualified from receiving FAP for ten years. 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. For an IPV based on concurrent receipt of FAP benefits, the disqualification period is ten years if fraudulent statements were made regarding identity or residency. BAM 720, p. 16.

As discussed above, MDHHS has established by clear and convincing evidence that Respondent committed an IPV. MDHHS requested Respondent be disqualified for a period of 12-months. There was no evidence of prior IPV's by Respondent. This was

Respondent's first IPV for FAP; therefore, 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 2018), p.

1. The OI amount was previously established by MDHHS and not at issue in this case.

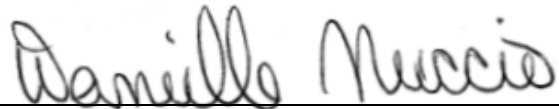
DECISION AND ORDER

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.

IT IS ORDERED that Respondent be personally disqualified from FAP for a period of 12 months.

DN/dm



Danielle Nuccio
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
**MDHHS-OIG-
HEARINGS@michigan.gov**
DHHS

Marlena Huddleston
Muskegon County DHHS
**MDHHS-Muskegon-
Hearing@michigan.gov**

Policy-Recoupment

StebbinsN

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MOAHR

Via-First Class Mail :

Respondent

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