



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.: 23-000966
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION FOR
INTENTIONAL PROGRAM VIOLATION AND RECIPIENT CLAIM

Upon the request for a hearing by the Michigan Department of Health and Human Services (MDHHS), this matter is before the undersigned administrative law judge 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. After due notice, a hearing was held via telephone conference line on July 26, 2023. MDHHS was represented by Holly Borkowski, regulation agent with the Office of Inspector General. Respondent did not participate despite being given at least 15 minutes from the scheduled hearing time to call.

ISSUES

The first issue is whether MDHHS established against Respondent a claim for over-issued Food Assistance Program (FAP) benefits.

The second issue is whether MDHHS established by clear and convincing evidence that Respondent committed an intentional program violation (IPV) which justifies imposing a FAP-related disqualification period.

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 March [REDACTED] 2021, Respondent applied for FAP benefits from the State of Ohio.
2. From March 26, 2021 through at least February 2022, Respondent received FAP benefits from the State of Ohio.
3. On June [REDACTED] 2021, Respondent electronically applied for FAP benefits from MDHHS and reported no other persons in the household. Respondent also twice reported not receiving FAP benefits from another state in the past 30 days.

4. On June 29, 2021, MDHHS mailed Respondent notice of an approval of FAP benefits based on a one-person FAP benefit group.
5. From June 2021 through February 2022, Respondent received \$[REDACTED] in FAP benefits from the State of Michigan (excluding a 15% supplement issued under federal regulations).
6. On February 21, 2023, MDHHS requested a hearing to establish a recipient claim of \$[REDACTED] against Respondent for FAP benefits allegedly over-issued from June 2021 through February 2022. MDHHS also requested a hearing to establish a one-year FAP-related IPV disqualification against Respondent.
7. As of July 26, 2023, Respondent had no previous FAP-related IPV disqualifications.

CONCLUSIONS OF LAW

The FAP (formerly known as the Food Stamp program) is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. MDHHS administers the FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. FAP policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

MDHHS requested a hearing, in part, to establish a claim against Respondent for \$2,839 in allegedly over-issued FAP benefits from June 2021 through February 2022. Exhibit A, p. 1. MDHHS may request a hearing to establish a debt. BAM 600 (January 2020) p. 5. An unsigned Intentional Program Violation Repayment Agreement alleged that Respondent received an OI of FAP benefits due to failing to report receipt of ongoing FAP benefits from another state. Exhibit A, pp. 87-88

Generally, an OI is the benefits issued to a client group in excess of what it was eligible to receive.¹ BAM 700 (October 2018) p. 2. When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the OI. *Id.* Recoupment is an MDHHS action to identify and recover a benefit OI. *Id.* A claim is the resulting debt created from an OI of benefits. *Id.*

Federal regulations refer to OIs as “recipient claims” and mandate states to collect them. 7 CFR 273.18(a). Recipient claim amounts not caused by trafficking are calculated by determining the correct amount of benefits for each month there was an OI and subtracting the correct issuance from the actual issuance. CFR 273.18(c)(1). Additionally,

¹ An OI may also be the amount of FAP benefits that were trafficked or attempted to be trafficked. BAM 700 (October 2018) p. 2.

expunged benefits (i.e., unused benefits which eventually expire from non-use) are to be subtracted from the OI.²

For all programs, benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. BEM 222 (October 2018) pp. 1-3. For FAP, benefit duplication is prohibited except in limited circumstances.³ 7 CFR 273.12(a)(2) and *Id.*

MDHHS documented that an investigation of Respondent commenced after an internal report indicated that Respondent received duplicate FAP benefits from the States of Michigan and Ohio. Exhibit A, pp. 3-4. MDHHS followed-up by requesting information from the State of Ohio. In response, MDHHS received documents from the State of Ohio of Respondent's FAP history listing issuances from March 2021 through February 2022. Exhibit A, pp. 72-73. MDHHS also obtained a copy of Respondent's application.

MDHHS presented a Benefit Summary Inquiry listing its own FAP issuances to Respondent. Exhibit A, pp. 81-85. From June 2021 through February 2022, excluding 15% supplements issued under federal regulations, Respondent received FAP issuances totaling \$[REDACTED]

A Notice of Case Action dated June 29, 2021, indicated Respondent received FAP benefits for a benefit group including only himself. Exhibit A, pp. 61-65. Respondent's benefit application from Ohio dated March 18, 2021, listed no household members other than himself. Exhibit A, pp. 69-71. The evidence established that Respondent's FAP benefit groups from the States of Michigan and Ohio included only Respondent.

The evidence established that MDHHS issued Respondent \$[REDACTED] in FAP benefits from June 2021 through February 2022. The evidence further established that Respondent received duplicate FAP benefits from the State of Ohio during the same period. As receipt of duplicate FAP benefits is prohibited, MDHHS established a recipient claim against Respondent for \$[REDACTED] in over-issued FAP benefits.

MDHHS also requested a hearing to establish a one-year IPV disqualification period against Respondent. MDHHS may request a hearing to establish an IPV. BAM 600 (January 2020) p. 5.

The types of recipient claims are those caused by agency error, unintentional recipient error, and IPV. 7 CFR 273.18(b). An IPV shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or

² Documents of Respondent's FAP expenditures verified that all FAP benefits issued during the alleged OI period were spent. Exhibit A, pp. 75-80.

³ One allowable circumstance when duplicate FAP benefits may be issued is when the client resides in a domestic violence shelter. There was no evidence of circumstances excusing duplicate FAP issuances.

⁴ Consolidated Appropriations Act, Pub. Act 116-20, 2021, Sec 702(a).

- (2) Committed any act that constitutes a violation of Supplemental Nutrition Assistance Program (SNAP), SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards.⁵ 7 CFR 273.16(c).

An IPV requires clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an IPV. 7 CFR 273.16(e)(6). An evidentiary standard of clear and convincing is “the most demanding standard applied in civil cases.” *In re Martin*, 450 Mich 204, 226-227; 538 NW2d 399 (1995). Clear and convincing evidence must be strong enough to cause a clear and firm belief that the proposition is true; it is more than proving that the proposition is probably true. M Civ JI 8.01. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black’s Law Dictionary 888 (6th ed. 1990).

On an MDHHS application for FAP benefits dated June [REDACTED] 2021, Respondent was twice asked, “Has anyone received Food Assistance from another state in the last 30 days?” Exhibit A, pp. 9-14. Respondent answered “no” both times. Exhibit A, p. 10 and 12. As of June 2021, Respondent had been receiving FAP benefits from the State of Ohio since March 2021. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (October 2021) p. 9. Respondent should have known of the importance of reporting accurately as MDHHS applications warn that reported information must be accurate, subject to penalties of perjury. BAM 115 (January 2023) p. 2. There was no evidence that Respondent could not understand the correct and clear reporting requirements. There was also no evidence suggesting that Respondent sought to correct the misreporting.⁶

The evidence established that Respondent twice reported not receiving FAP benefits from another state while receiving benefits from MDHHS. Respondent’s misreporting directly caused the OI of FAP benefits. Generally, a misreporting causing an OI of benefits is clear and convincing evidence of an IPV; evidence was not presented to rebut the generality.

MDHHS clearly and convincingly established that Respondent committed an IPV by failing to report receiving FAP benefits from another state. Accordingly, MDHHS may proceed with disqualifying Respondent.

Individuals found to have committed a FAP-related IPV shall be ineligible to receive FAP benefits. 7 CFR 273.16(b). The standard disqualification period is used in all instances except when a court orders a different period. IPV penalties are as follows: one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. *Id.* and BAM 720 (October 2017) p. 16.

MDHHS did not allege a previous FAP-related IPV by Respondent. Thus, a one-year disqualification is proper for Respondent’s first FAP-related IPV.

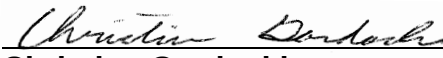
⁵ FAP is the Michigan equivalent of SNAP.

⁶ MDHHS presented comments from Respondent’s case which did not document a reporting by Respondent of receiving benefits from the State of Ohio. Exhibit A, p. 74

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established a claim of \$[REDACTED] for FAP benefits over-issued to Respondent from June 2021 through February 2022 due to an IPV. The MDHHS requests to establish against Respondent a claim of \$[REDACTED] and a one-year FAP-related IPV disqualification are **APPROVED**.

CG/dm


Christian Gardocki
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
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Policy-Recoupment

Nstebbins

BSC4HearingDecisions

MOAHR

Via-First Class Mail :

Respondent

[REDACTED]
[REDACTED]
[REDACTED]