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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 21, 2023
MOAHR Docket No.: 23-000974
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION TO ESTABLISH
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 25, 2023. MDHHS was represented by Patrick Richard, senior regulation agent with the Office of Inspector General (OIG). 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 recipient claim for 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.

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] 2022, Respondent applied for FAP benefits and reported a household with no other members. Respondent requested no authorized representative (AR).
2. As of March 2022, Respondent was an ongoing FAP benefit recipient.
3. From March [REDACTED] through October [REDACTED] 2022, Respondent was incarcerated.

4. From March 19 through May 9, 2022, \$[REDACTED] in FAP benefits were spent from Respondent's Electronic Benefit Transfer (EBT) card.
5. On February 22, 2023, Respondent told OIG that he gave his Electronic Benefits Transfer (EBT) card and personal identification number (PIN) to his parents but did not state when or for what purpose.
6. On February [REDACTED] 2023, MDHHS requested a hearing to establish against Respondent a claim for \$[REDACTED] for unauthorized use of FAP benefits. MDHHS also sought to establish against Respondent a one-year FAP-related IPV disqualification period.

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 against Respondent a \$[REDACTED] recipient claim. 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 stated a claim was pursued for "misuse of EBT card". Exhibit A, pp. 81-82

An OI is the benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (October 2018) pp. 1-2. For FAP benefits, an OI is also the amount of benefits trafficked or attempted to be trafficked. *Id.* 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 by an OI of benefits. *Id.*

Federal regulations refer to claims as "recipient claims" and mandate states to collect them. 7 CFR 273.18(a)(3). A recipient claim is an amount owed because of benefits that are over-issued or trafficked. 7 CFR 273.18(a)(1).

During the hearing, MDHHS acknowledged the claim sought against Respondent was not for over-issued benefits; MDHHS also did not allege trafficking by Respondent. MDHHS insisted it only sought a claim against Respondent for "misuse" and/or "unauthorized use" of benefits. As stated above, recipient claims may only be pursued for over-issued benefits and/or trafficking. There is no basis for MDHHS to pursue a claim based on an "misuse of EBT card". Without a basis for establishing a claim against Respondent, MDHHS's request to establish against Respondent a claim of \$[REDACTED] is properly dismissed.

MDHHS also requested a hearing to establish against Respondent a FAP-related IPV disqualification period of one year. Exhibit A, p. 1. MDHHS may request a hearing to establish an IPV disqualification period. BAM 600 (January 2020) p. 5. Like the claim pursued by MDHHS, the IPV was based on Respondent's "misuse of an EBT card". Exhibit A, pp. 81-82.

The types of recipient claims are those caused by agency error, unintentional client error, and any claim for an overpayment or trafficking resulting from an individual committing an 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) 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 cards¹. 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).

Neither federal regulation, Michigan statutes, nor MDHHS policy are known to define "misuse" or "unauthorized use". Federal regulations do allow for an IPV based on violating SNAP regulations for the purpose of transferring benefits to an unauthorized individual. MDHHS alleged that Respondent shared his EBT card and PIN to transfer benefits to a family member during a period of incarceration.

MDHHS presented Respondent's application for FAP benefits dated March ■■■ 2022, which reported no other household members or a need for an authorized representative (AR).² Exhibit A, pp. 52-56. MDHHS also presented documentation indicating Respondent did not have an AR attached to his FAP benefit case. Exhibit A, p. 31. Documentation of Respondent's FAP issuance history listing a group size of one person was further evidence of Respondent being the only person authorized to Respondent's EBT card. Exhibit A, pp. 29-30. The evidence established that only Respondent was authorized to receive FAP benefits on his case.

MDHHS presented documentation dated February ■■■ 2023, from the county sheriff verifying Respondent's dates of incarceration from March ■■■ through October ■■■ 2022.

¹ FAP is the Michigan equivalent of SNAP.

² MDHHS additionally presented Respondent's applications from 2018 and 2020 with comparable reporting. Exhibit A, pp. 21-51.

Exhibit A, p. 9. MDHHS also documented that Respondent verbally corroborated the dates of incarceration. Exhibit A, p. 3. The evidence established that Respondent was incarcerated from March [REDACTED] through October [REDACTED] 2022.

To establish an unauthorized transfer of FAP benefits, MDHHS presented documentation listing \$[REDACTED] in FAP benefit expenditures from March 19 through May 9, 2022.³ Exhibit A, p. 16. MDHHS reasonably concluded that Respondent could not have spent the \$[REDACTED] in FAP benefits while incarcerated. A regulation agent documented and testified that he spoke with Respondent on February [REDACTED] 2023, and that Respondent admitted giving his parents his EBT card and PIN. Exhibit A, pp. 4-5. Given the absence of a rebuttal by Respondent, Respondent's statement will be accepted as a fact.

MDHHS interpreted Respondent's statement as an admission to transfer FAP benefits to an unauthorized individual(s) (i.e., Respondent's parents). The MDHHS interpretation is reasonably possible, but not clear and convincing. It is possible that Respondent provided his parents with his EBT card and PIN for the purpose of buying food for himself. It is possible that Respondent gave his parents his EBT card and PIN to safeguard while incarcerated. Without additional evidence clarifying Respondent's intent, it cannot be clearly and convincingly concluded that Respondent intended to transfer benefits to an unauthorized individual(s).

Given the evidence, MDHHS failed to establish that Respondent intended to transfer benefits to unauthorized persons.⁴ Thus, an IPV based on "misuse of an EBT card" and/or "unauthorized use" was not established.

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. Standard 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 alleged that a one-year FAP-related disqualification period was proper for Respondent's first IPV.⁵ Without a finding that Respondent committed an IPV, an IPV disqualification cannot follow. Thus, MDHHS is denied its request to establish a one-year FAP-related IPV disqualification against Respondent.

³ MDHHS documented awareness of Respondent's incarceration through October 2022 on April 8, 2022. Exhibit A, p. 20. Arguably, MDHHS is at fault for FAP benefits spent after April 8, 2022, by failing to halt use of Respondent's EBT card. Such an argument is not compelling because it shifts a client's responsibility to not misuse EBT cards to MDHHS to stop clients from misusing EBT cards.

⁴ MDHHS offered an Information Booklet as evidence that Respondent was aware that transferring benefits was improper. Exhibit A, pp. 35-78. Without sufficient evidence of an IPV, the evidence is irrelevant.

⁵ Documents of past FAP-related IPV's against Respondent listed none. Exhibit A, pp. 33-34 and 83-84.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish against Respondent a claim of \$[REDACTED] MDHHS also failed to establish an IPV by Respondent. The MDHHS requests to establish against Respondent a recipient claim and a one-year FAP-related IPV disqualification period are **DENIED**.

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 :

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Respondent

[REDACTED]
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[REDACTED]