



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: September 20, 2023
MOAHR Docket No.: 23-002420
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

The Michigan Department of Health and Human Services (MDHHS or the Department) requested a hearing alleging that Respondent [REDACTED] [REDACTED] 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 September 18, 2023.

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); 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?
3. Has MDHHS established a claim for 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 August █ 2022, █ █ (Decedent) submitted a completed Mid-Certification Contact Notice to the Department that listed her phone number as (█ █ and her friend, █ █ (Respondent), as living in her home but he was not considered part of her group.
2. On the same day, the Department received Respondent's completed Mid-Certification Contact Notice listing Decedent as a household member with the same phone number and address, but she was not part of his FAP group. Respondent signed the form indicating his understanding that "penalties for intentionally breaking food assistance rules include disqualification, fines, or imprisonment" and that he could review all of the rules at the website provided.
3. On December █ 2022, Decedent died.
4. After her death, Decedent's Electronic Benefit Transfer (EBT) FAP card was used to make 23 purchases totaling \$█
5. After her death, Decedent's EBT card had five balance inquiries all made from the phone number (█ █
6. A Fedex Open Source query of the phone number showed that it was associated with Decedent and the email address █t-mobile.com.
7. One transaction after Decedent's death was completed at Meijer and the Department requested records and video surveillance footage from Meijer of the transaction.
8. The transaction showed an older African American man.
9. At the time of the transactions, Respondent was a █-year-old African American man living at Decedent's address whose State of Michigan Identification photo resembles the man seen in the Meijer surveillance images.
10. Respondent does not have an apparent physical or mental impairment that would limit the understanding or ability to comply with FAP rules.
11. Respondent has no prior FAP IPV disqualifications.
12. On May █ 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally used the FAP benefits of another in December 2022 (fraud period). OIG requested that (i) Respondent repay MDHHS as a recipient claim the value of

trafficked benefits totaling \$[REDACTED] and (ii) Respondent be disqualified from receiving FAP benefits for a period of 12 months due to committing an IPV by unauthorized use.

13. 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.

Unauthorized Use/Trafficking and IPV Disqualification

MDHHS alleges that Respondent committed an IPV by unauthorized use of FAP benefits and requests that Respondent be disqualified from FAP eligibility. IPV is defined, in part, as having intentionally “committed any act that constitutes a violation of [FAP], [FAP federal] regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of [FAP] benefits or EBT [electronic benefit transfer] cards.” 7 CFR 273.16(c)(2) and (e)(6). FAP “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. Trafficking includes “the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PIN)... 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 by unauthorized use and by extension trafficking, 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. 16. 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 unauthorized use of FAP benefits of his Decedent, a friend/roommate. Pursuant to federal regulations, FAP

benefits may only be used for the benefit of the members of that FAP group. Decedent was the only member of her FAP group; therefore, FAP benefits given to her could only be used for her benefit. After Decedent's death, five balance inquiries were made by the same phone number listed on Respondent's and Decedent's separate submissions to the Department. In addition, photo surveillance footage from Meijer shows that the person using Decedent's EBT card has a strong resemblance to Respondent. Therefore, given the date of Decedent's death, the transaction and balance inquiry history from Decedent's EBT card, and the photos from Meijer and the State of Michigan identification, the Department has met its burden of proof by clear and convincing evidence that Respondent committed an IPV. An individual who is found to have committed an IPV by a hearing decision is disqualified from receiving program benefits. 7 CFR 273.16(b). First instances of IPV's are subject to a 12-month disqualification. BAM 720, p. 16. Since Respondent has no prior IPV, Respondent is subject to a 12-month disqualification from the FAP program. 7 CFR 273.16(b).

Repayment

A party is responsible for a recipient claim to MDHHS in an amount equal to the value of the trafficked. 7 CFR 273.18(a)(ii). The value of the trafficked benefits is determined by (i) the individual's admission; (ii) adjudication; or (iii) the documentation that forms the basis for the unauthorized use determination. 7CFR 273.18(c)(2). Documentation used to establish the trafficking determination can include an affidavit from a store owner or sworn testimony from a federal or state investigator of how much a client could have reasonably trafficked in that store, which can be established through circumstantial evidence. BAM 720, pp. 8-9.

Here, MDHHS seeks repayment from Respondent of \$[REDACTED] the amount of the unauthorized use or stolen benefits. The transaction and balance inquiry history after Decedent's death coupled with the photo identification are sufficient evidence to show that Respondent used the benefits. Therefore, the Department has met its burden of proof in establishing a claim for \$[REDACTED]

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, Respondent is subject to a FAP disqualification.
2. Respondent is responsible to MDHHS for a recipient claim of \$[REDACTED] for unauthorized use of FAP benefits.

IT IS ORDERED that MDHHS initiate recoupment and/or collection procedures in accordance with MDHHS policy for a FAP recipient claim 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.



AM/dm

Amanda M. T. Marler
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
Caryn Jackson
Wayne-Hamtramck-DHHS
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Policy-Recoupment

StebbinsN

BSC4HearingDecisions

MOAHR

Via-First Class Mail :

Respondent

[REDACTED]
[REDACTED]
[REDACTED]