



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: October 26, 2023
MOAHR Docket No.: 23-002839
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

The Michigan Department of Health and Human Services (MDHHS or the Department) requested a hearing alleging that Respondent Jesse Varela Broska 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 27, 2023.

Cynthia Smith, 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. 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 February 1, 2021 to June 30, 2021, Respondent received \$ [REDACTED] in FAP benefits. (Exhibit A, pp. 100-101)
2. On August [REDACTED] 2020, Respondent submitted an Assistance Application in Michigan and reported he was homeless and had a mailing address in [REDACTED] [REDACTED] MI. Respondent reported he currently had no employment income and he had received food assistance from the state of Colorado in the last 30 days. (Exhibit A, pp. 11-26)
3. Respondent's signature on the Assistance Application certified that he read and understood the rights and responsibilities. This would include providing accurate information and timely reporting changes. (Exhibit A, p. 19; Regulation Agent Testimony)
4. On September [REDACTED] 2020, the Department verified that Respondent's benefit case in Colorado had closed August [REDACTED] 2020. (Exhibit A, p. 30)
5. On September [REDACTED] 2020 an interview was completed with Respondent. Respondent verified his mailing address and reported he had no income. The rights and responsibilities were reviewed with Respondent. (Exhibit A, pp. 27-29)
6. On September [REDACTED] 2020, a Notice of Case Action was issued to Respondent approving FAP benefits for the household of one as of September 1, 2020. The Notice contained a budget summary showing no earned income was included in the FAP budget. The Notice also advised that FAP was denied for the month of August 2020 because Respondent received the same program benefits in another state for the benefit period. This Notice also reminded Respondent of the responsibility to report changes that may affect eligibility within 10 days. A blank Change Report form was included. (Exhibit A, pp. 31-39)
7. A report from The Work Number documents that Respondent was employed in Michigan with [REDACTED] [REDACTED] from September 11, 2020 to March 7, 2021, 2021. Respondent reported an address in [REDACTED] [REDACTED] Michigan for this employment. Respondent's earnings were documented and show his first pay date was September 25, 2020 and his last pay date was December 31, 2020. (Exhibit A, pp. 51-52)
8. On December [REDACTED] 2020, Respondent applied for food assistance and other benefits in Colorado and reported he was homeless but resided in [REDACTED] County. (Exhibit A, pp. 61-70)

9. A report from The Work Number documents that Respondent was employed in Colorado with [REDACTED] [REDACTED] [REDACTED] [REDACTED] from January 11, 2021 to January 28, 2021. Respondent reported an address in [REDACTED] Colorado for this employment. Respondent's earnings were documented. (Exhibit A, pp. 49-50)
10. A report from The Work Number documents that Respondent was employed in Colorado with [REDACTED] [REDACTED] from January 28, 2021 to March 10, 2021. Respondent reported an address in [REDACTED] Colorado for this employment. Respondent's earnings were documented. (Exhibit A, pp. 47-48)
11. A report from The Work Number documents that Respondent was employed in Colorado with [REDACTED] [REDACTED] [REDACTED] from April 15, 2021 to May 5, 2021. No address was provided for Respondent for this employment. Respondent's earnings were documented. (Exhibit A, pp. 45-46)
12. A report from The Work Number documents that Respondent was employed in Colorado with [REDACTED] from June 8, 2021 to June 25, 2021. Respondent reported an address in [REDACTED] Colorado for this employment. Respondent's earnings were documented. (Exhibit A, pp. 43-44)
13. As of December [REDACTED] 2020, Respondent's Michigan issued FAP benefits were utilized almost exclusively in Colorado, with a couple of transactions in Nevada. (Exhibit A, pp. 53-58)
14. Respondent was aware of the responsibility to accurately report information and any changes to the Department. (Exhibit A, pp. 19, and 35-39; Regulation Agent Testimony)
15. Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the reporting requirements. (Exhibit A, p. 14)
16. Respondent has no prior IPV disqualifications. (Exhibit A, p. 1)
17. On May 17, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to report moving out of state and as a result, received FAP benefits from February 1, 2021 to June 30, 2021 (fraud period) that Respondent was ineligible to receive. OIG requested that (i) Respondent repay to MDHHS \$ [REDACTED] 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. 1-101)
18. 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 a failure to report moving out of state, resulting in receiving a greater amount of FAP benefits from FAP benefits from February 1, 2021 to June 30, 2021 (fraud period) than Respondent was eligible to receive.

The Department has established that Respondent was aware of the responsibility to accurately report information and to timely report any household changes to the Department, including changing residence and receiving benefits from another state. A

person cannot receive FAP in more than one state for any month. BEM 222 October 1, 2018, p. 3. Households are required to report changes in residence and the resulting change in shelter costs. 7 CFR 273.12(a)(1)(i)(D)(iii). Department policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within 10 days. BAM 105 (July 1, 2020), pp. 11-13. Further, clients must completely and truthfully answer all questions on forms and in interviews. BAM 105, p. 9. Respondent's signature on the Assistance Application certified that that he read and understood the rights and responsibilities. This would include providing accurate information and timely reporting changes. The rights and responsibilities were reviewed with Respondent during the interview. The Notice of Case Action also reminded Respondent of the responsibility to report changes that may affect eligibility within 10 days. (Exhibit A, pp. 19, and 35-39; Regulation Agent Testimony). Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the reporting requirements. (Exhibit A, p. 14).

On August [REDACTED] 2020, Respondent submitted an Assistance Application in Michigan and reported he was homeless and had a mailing address in [REDACTED], MI. Respondent reported he currently had no employment income and he had received food assistance from the state of Colorado in the last 30 days. (Exhibit A, pp. 11-26). On September [REDACTED] 2020, the Department verified that Respondent's benefit case in Colorado had closed August 31, 2020. (Exhibit A, p. 30). On September [REDACTED] 2020 an interview was completed with Respondent. Respondent verified his mailing address and reported he had no income. (Exhibit A, pp. 27-29). On September [REDACTED] 2020, a Notice of Case Action was issued to Respondent approving FAP benefits for the household of one as of September 1, 2020. The Notice contained a budget summary showing no earned income was included in the FAP budget. The Notice also advised that FAP was denied for the month of August 2020 because Respondent received the same program benefits in another state for the benefit period. (Exhibit A, pp. 31-35).

A report from The Work Number documents that Respondent was employed in Michigan with [REDACTED] from September 11, 2020 to March 7, 2021. Respondent reported an address in [REDACTED], Michigan for this employment. Respondent's earnings were documented and show his first pay date was September 25, 2020 and his last pay date was December 31, 2020. (Exhibit A, pp. 51-52). There is no evidence that Respondent timely reported this employment income to the Department. However, the Department determined that for November 2020 the overissuance was below the threshold and for December 2020 no overpayment exists. (Exhibit A, p. 98).

The Department is alleging an IPV based on the failure to report moving out of state. On December [REDACTED] 2020, Respondent applied for food assistance and other benefits in Colorado and reported he was homeless but resided in [REDACTED] County. (Exhibit A, pp. 61-70). A report from The Work Number documents that Respondent was employed in Colorado with [REDACTED] from January 11, 2021 to January 28, 2021. Respondent reported an address in [REDACTED] Colorado for this employment. Respondent's earnings were documented. (Exhibit A, pp. 49-50). A report from The Work Number documents that Respondent was employed in Colorado with [REDACTED] from January 28, 2021 to March 10, 2021. Respondent reported an address in [REDACTED]

Colorado for this employment. Respondent's earnings were documented. (Exhibit A, pp. 47-48). A report from The Work Number documents that Respondent was employed in Colorado with [REDACTED] from April 15, 2021 to May 5, 2021. No address was provided for Respondent for this employment. Respondent's earnings were documented. (Exhibit A, pp. 45-46). A report from The Work Number documents that Respondent was employed in Colorado with [REDACTED] from June 8, 2021 to June 25, 2021. Respondent reported an address in [REDACTED] Colorado for this employment. Respondent's earnings were documented. (Exhibit A, pp. 43-44). Further, as of December [REDACTED] 2020, Respondent's Michigan issued FAP benefits were utilized almost exclusively in Colorado, with a couple of transactions in Nevada. (Exhibit A, pp. 53-58). There was no evidence that Respondent reported moving out of state to the Department in accordance with the reporting responsibilities.

The evidence establishes that Respondent failed to timely report his move out of state to the Department within 10 days, as required by policy. Respondent's change in residency was utilized to re-determine FAP eligibility during the fraud period. Respondent's failure to timely and accurately report the change in residency resulted in an OI of FAP benefits. 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 IPV disqualifications. (Exhibit A, p. 1). Because this was Respondent's first IPV, 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 February 1, 2021 to June 30, 2021, Respondent received \$[REDACTED] in FAP benefits. (Exhibit A, pp. 100-101). However, when the change in residency was utilized to redetermine eligibility, Respondent was not eligible to receive FAP benefits during the fraud period. Therefore, MDHHS is entitled to repayment from Respondent of \$[REDACTED] in overissued FAP benefits.

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/dm



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
**MDHHS-OIG-
HEARINGS@michigan.gov**

DHHS
Jennifer Weston
Van Buren County DHHS
**MDHHS-VanBuren-
Hearings@michigan.gov**

Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

Respondent

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