



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: November 21, 2023
MOAHR Docket No.: 23-002845
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [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 Timothy McColley 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 October 24, 2023.

Patrick Waldron, 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 May 1, 2022 to July 31, 2022, Respondent received FAP benefits for a household size of one. (Exhibit A, p. 70)
2. On November █ 2021, Respondent submitted an Assistance Application. Respondent's signature on the Assistance Application certified that he read and understood the rights and responsibilities. This would include timely reporting changes and ensuring that FAP benefits are not used by unauthorized persons and must only be used to purchase eligible food for the FAP household members. (Exhibit A, pp. 13-17 and 22-65)
3. On December █ 2021, an interview was completed with Respondent. The rights and responsibilities were explained to Respondent. (Exhibit A, pp. 18-21)
4. The Department confirmed that Respondent was incarcerated at the jail from March █ 2022 through April █ 2022 when he was transferred to the Michigan Department of Corrections (MDOC). Respondent was incarcerated with MDOC from April █ 2022 through January █ 2023. (Exhibit A, pp. 4 and 8-12)
5. On September █ 2021 Respondent was issued an electronic benefit transfer (EBT) card ending in █ and the PIN was last changed October █ 2021. (Exhibit A, p. 69)
6. From May 2, 2022 to July 11, 2022, Respondent's EBT card ending in █ was utilized for numerous transactions totaling \$█ (Exhibit A, p. 71)
7. Respondent was aware of the responsibilities to timely report changes and to ensure that FAP benefits are not used by unauthorized persons and must only be used to purchase eligible food for the FAP household members. (Exhibit A, pp. 17 and 20-65)
8. Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the FAP responsibilities. (Exhibit A, pp. 15, 19, and 72-73)
9. Respondent has no prior FAP IPV disqualifications. (Exhibit A, pp. 1 and 79-80)
10. On May 18, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to report when he was incarcerated and as a result, Respondent is responsible for the unauthorized use of FAP benefits from May 2, 2022 to July 11, 2022 (fraud period). OIG requested that (i) Respondent repay \$1,166.21 to MDHHS for unauthorized FAP transactions and (ii) Respondent be disqualified from receiving

FAP benefits for a period of 12 months due to committing an IPV. (Exhibit A, pp. 1-80)

11. 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

In this case, MDHHS alleges that Respondent committed an IPV based on failing to report when he was incarcerated as a result, Respondent is responsible for the unauthorized use of FAP benefits from May 2, 2022 to July 11, 2022 (fraud period).

The Department has established that Respondent was aware of the responsibilities to timely report changes to the Department and to ensure that FAP benefits are not used by unauthorized persons and must only be used to purchase eligible food for the FAP household members. 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, (August 1, 2021), pp. 11-13. Further, food program benefits may only be used by the household, or other persons the household selects, to purchase eligible food for the household. 2 CFR 274.4(a).

Respondent's signature on the Assistance Application certified that he read and understood the rights and responsibilities. This would include timely reporting changes and ensuring that FAP benefits are not used by unauthorized persons and must only be used to purchase eligible food for the FAP household members. During the interview, the rights and responsibilities were reviewed with Respondent. (Exhibit A, pp. 17 and 20-65). Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the FAP responsibilities. (Exhibit A, pp. 15, 19, and 72-73).

The Department asserted that Respondent intentionally failed to report when he was incarcerated and as a result, Respondent is responsible for the unauthorized use of FAP benefits from May 2, 2022 to July 11, 2022 (fraud period). The Department confirmed that Respondent was incarcerated at the jail from March [REDACTED] 2022 through April [REDACTED] 2022 when he was transferred to the Michigan Department of Corrections (MDOC). Respondent was incarcerated with MDOC from April [REDACTED] 2022 through January [REDACTED] 2023. (Exhibit A, pp. 4 and 8-12). There was no evidence that Respondent reported that he was incarcerated to the Department. Further, between May 2, 2022 to July 11, 2022, Respondent's EBT card ending in [REDACTED] was utilized for numerous transactions totaling \$[REDACTED] (Exhibit A, p. 71).

Respondent's failure to timely report the incarceration resulted in an OI of FAP benefits. Respondent was not eligible for FAP while he was incarcerated. Further, the food purchased while Respondent was incarcerated was not for Respondent's use. 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 FAP IPV disqualifications. (Exhibit A, pp. 1 and 79-80). Because this was Respondent's first IPV for FAP, 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. The Department confirmed that Respondent was incarcerated at the jail from March [REDACTED] 2022 through April [REDACTED] 2022 when he was transferred to the Michigan Department of Corrections (MDOC). Respondent was incarcerated with MDOC from April [REDACTED] 2022 through January [REDACTED] 2023. (Exhibit A, pp. 4 and 8-12). From May 1, 2022 to July 31, 2022, Respondent received FAP benefits for a household size of one. (Exhibit A, p. 70). Respondent was not eligible for FAP benefits while he was incarcerated. Additionally, from May 2, 2022 to July 11, 2022, Respondent's EBT card ending in [REDACTED] was utilized for numerous transactions totaling \$[REDACTED] (Exhibit A, p. 71). The food purchased while Respondent was incarcerated was not for Respondent's use.

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
Kimberly Kornoelje
Kent County DHHS
**MDHHS-Kent-
Hearings@michigan.gov**

Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

Respondent

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