



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.: 23-003485
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on October 18, 2023. The Department was represented by Patrick Waldron, Regulation Agent of the Office of Inspector General (OIG). Respondent was present and was unrepresented.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving 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. The Department's OIG filed a hearing request on June [REDACTED] 2023, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in circumstances to the Department and to not trade or sell FAP benefits.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is July 30, 2021, through November 24, 2021 (fraud period).
7. During the fraud period, the Department alleges that Respondent was not entitled to receive \$[REDACTED] in FAP benefits.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$[REDACTED]
9. This was Respondent's first alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Service as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services 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 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. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking overissuances that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500.00 or more, or
 - the total amount is less than \$500.00, and
 - the group has a previous IPV, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee.

BAM 720 (January 2016), p. 5.

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities.

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BAM 700 (October 2016), p. 7; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 11.

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p. 1 (emphasis in original). Federal regulations state the determination of an IPV shall be based on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an IPV. 7 CFR 273.16(e)(6). The federal regulations define an IPV as: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Supplemental Nutrition Assistance Program (SNAP), SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing for trafficking of SNAP benefits or Electronic Benefit Transfer (EBT) cards. 7 CFR 273.16(c). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, the Department alleged that Respondent committed an IPV because she utilized her son's FAP benefits during a period in which he was incarcerated. In support of its contention that Respondent committed an IPV, the Department presented an application Respondent submitted to the Department on October [REDACTED] 2021. The Department asserts that when completing the application process, Respondent acknowledged that she had received the Information Booklet advising her regarding "Things You Must Do," which explained how to properly use FAP benefits. Additionally, the Department presented an application submitted by Respondent's son on June [REDACTED] 2021. Respondent was listed as her son's AR and acknowledged that she was aware of the rights and responsibilities of properly using FAP benefits.

The Department presented documentation showing that Respondent's son was incarcerated during the period of July [REDACTED] 2021, through July [REDACTED] 2021, and July [REDACTED] 2021, through October [REDACTED] 2021, in [REDACTED]. Respondent was moved and was incarcerated at the [REDACTED] during the period of October [REDACTED] 2021, through February [REDACTED] 2022. The Department also presented Respondent's son's IG-311 FAP usage history showing his FAP benefits were utilized during the period of his incarceration.

At the hearing, Respondent conceded that she used her son's FAP benefits during the period of his incarceration. Respondent stated that she was using her income to deposit funds into her son's commissary account. As repayment for the money spent on her son, Respondent utilized his FAP benefits. Respondent testified that she did not understand that she was not allowed to use her son's FAP benefits.

The Department alleged that Respondent committed an act that constitutes a violation of state and federal laws and regulations pertaining to FAP benefits. FAP benefits may only be used by the household, or other persons that the household selects, to purchase eligible food for the household. 7 CFR 274.7(a). It is unlawful to utilize another person's FAP benefits for personal use under federal and state laws and policies. 7 CFR 273.16;

MCL 750.300a; BAM 401E (May 2020), pp. 14-15; BAM 720, p. 1; BEM 212 (July 2019), p. 6.

Although the Department established that Respondent misused her son's FAP benefits, the Department must present clear and convincing evidence that Respondent intended to commit an IPV. Federal regulations require that determination of an IPV shall be based on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an IPV. 7 CFR 273.16(e)(6). Respondent's testimony that she was not aware that her utilization of her son's FAP benefits was a misuse of FAP benefits was credible. Accordingly, the Department failed to establish that Respondent committed an IPV.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15; BEM 708 (October 2016), p. 1. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is not subject to a disqualification under the FAP program.

Overissuance

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700, p. 1. An overissuance is the amount of benefits issued to the client group in excess of what the client was eligible to receive. BAM 700, p. 1; 7 CFR 273.18. Individuals who commit an act that constitutes a violation of FAP must repay the food benefits. BAM 401E, pp. 14-15.

As stated above, although the Department failed to establish that Respondent committed an IPV, the Department did establish that Respondent misused her son's FAP benefits. The Department presented Respondent's son's FAP usage history showing the amount of benefits used during the period of his incarceration. The total amount of the FAP benefits used was \$[REDACTED]. As Respondent committed an act that constitutes a violation of FAP, she must repay the benefits. Thus, the Department establish that it is entitled to recoup/collect \$[REDACTED] from Respondent.

DECISION AND ORDER

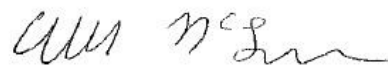
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has not established by clear and convincing evidence that Respondent committed an IPV.
2. The Department established that it is entitled to recoup \$[REDACTED] from Respondent.

The Department is ORDERED to initiate recoupment and/or collection procedures in the amount of \$[REDACTED] less any amounts that have already been recouped and/or collected.

It is FURTHER ORDERED that Respondent should not be disqualified from FAP for a period of 12 months.

EM/dm



Ellen McLemore
Administrative Law Judge
for Elizabeth Hertel, Director
Department of Health and Human Services

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

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Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

Respondent

[REDACTED]
[REDACTED]
[REDACTED]