



GRETCHEN WHITMER
GOVERNOR

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

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DIRECTOR

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Date Mailed: June 20, 2024
MOAHR Docket No.: 23-007162
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION FOR
INTENTIONAL PROGRAM VIOLATION AND OVERISSUANCE

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 May 29, 2024. MDHHS was represented by Sashae White, 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 claim for an overissuance (OI) of Food Assistance Program (FAP) benefits.

The second issue is whether MDHHS clearly and convincingly established that Respondent committed a FAP-related intentional program violation (IPV) which justifies imposing a disqualification period.

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 February [REDACTED] 2020, Respondent applied for FAP benefits and reported residency in Michigan, no employment income, and a household including no other persons.
2. On February [REDACTED] 2020, MDHHS sent Respondent written notice of FAP benefit approval which included boilerplate stating that clients are to report residency changes to MDHHS within 10 days.

3. On March ■ 2020, MDHHS sent Respondent notice of FAP benefit approval which included boilerplate stating that clients are to report residency changes to MDHHS within 10 days.
4. On September ■, 2020, Respondent resided in Nevada through at least July 2021.
5. From September 14, 2020, through at least February 23, 2022, Respondent exclusively spent FAP benefits in Nevada.
6. From November 2020 through January 2021, MDHHS issued \$■ in FAP benefits to Respondent.
7. On May ■ 2021, Respondent applied for FAP benefits and reported residency in Michigan, no employment income, and a household including no other persons.
8. On May ■ 2021, MDHHS sent Respondent notice of FAP benefit approval which included boilerplate stating that clients are to report residency changes to MDHHS within 10 days.
9. From May through July 2021, MDHHS issued \$■ in FAP benefits to Respondent.
10. As of July 2021, Respondent had not reported to MDHHS residency in Nevada.
11. On October 23, 2023, MDHHS requested a hearing to establish a recipient claim against Respondent for \$■ in FAP benefits allegedly over-issued from November 2020 through January 2021 and May through July 2021. MDHHS also sought to establish a one-year FAP-related IPV disqualification against Respondent.

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 a claim against Respondent for over-issued FAP benefits. 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 specifically alleged that Respondent received FAP benefit OIs of \$612 from November 2020 through January 2021 and \$883 from May through July 2021 due to failing to report non-Michigan residency. Exhibit A, pp. 189-191. For purposes of

simplification the OI period and amount will be combined to be \$1,495 from November 2020 through July 2022.

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. 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 FAP OIs as “recipient claims” and mandate states to collect them. 7 CFR 273.18(a). Recipient claims not caused by trafficking are calculated by subtracting the correct benefit amount for each month there was an OI from the actual issuance. 7 CFR 273.18(c)(1). Additionally, expunged benefits (i.e., unused benefits which eventually expire from non-use) are to be subtracted from the OI.¹

Under federal regulations, a household must live in the State in which it files an application for participation. 7 CFR 273.3(a). Certified change reporters are obligated to report changes in residency. 7 CFR 273.12(a)(1)(A)(iii). Residency changes must be reported to the state agency within 10 days. 7 CFR 273.12(a)(2) and BAM 105 (July 2020) p. 12. Generally, change reporters are those without reported employment income during the benefit period.² MDHHS policy reflects federal regulations. BAM 105 (January 2019) pp. 11-12.

Respondent’s application dated February ■ 2020, reported no employment income. Exhibit A, pp. 9-13. There was no evidence that MDHHS budgeted employment income for any benefit group members from Respondent’s application date through the end of the alleged OI period. Given the evidence, Respondent was a change reporter, and therefore, obligated to report to MDHHS any change in residency within 10 days.

MDHHS alleged that Respondent was a Nevada resident no earlier than September ■ 2020. MDHHS further alleged that Respondent continued to be a Nevada resident through at least July 2021. To support the allegations, MDHHS presented a one-year lease signed by Respondent on September ■ 2020 for a Nevada residence. Exhibit A, pp. 100-138. Signing a one-year lease is consistent with residency in the state for which residency is leased.

MDHHS presented documentation of Respondent’s FAP expenditures. Exhibit A, pp. 163-172. From September 14, 2020, through February 23, 2022, Respondent spent FAP benefits exclusively in Nevada. Neither federal regulations nor MDHHS policy restricts clients from spending FAP benefits outside of Michigan. However, repeated, and exclusive FAP expenditures in a state outside of Michigan is consistent with non-Michigan

¹ There was no evidence that any FAP benefits issued to Respondent were not spent.

² Simplified reporters, as opposed to change reporters, need only report when household income exceeds the simplified reporting income limit. Simplified reporters are persons who had employment income budgeted during the benefit period. BAM 200 (January 2021) p. 1.

residency. Furthermore, exclusive FAP expenditures over an extended period in the same state where a client leases a residence is highly consistent with residency in that state.

Respondent did not participate in the hearing to allege Michigan residency during the alleged OI period. Also, MDHHS did not document any reporting by Respondent concerning a change in residency. Exhibit A, pp. 173-178.

The evidence established that Respondent began residency in Nevada beginning September ■ 2020. The evidence also established that Respondent continued residency outside of Michigan through at least July 2021.

For failures to report changes, MDHHS is to begin the OI period in the first full benefit month after allowing time for the client to report changes (10 days- see BAM 105), MDHHS to process changes (10 days- see BAM 220), and the full negative action suspense period (12- day-see *Id.*).³ Applying the policy to a residency change date of September ■ 2020, allows for an OI period beginning November 2020.

MDHHS presented documentation listing \$■ in FAP benefits issued to Respondent from November 2020 through July 2021. Exhibit A, p. 179 and 184. A Notice of Case Action dated February 24, 2020, approved Respondent for FAP benefits based on a group including only Respondent. Exhibit A, pp. 24-28. There was no evidence of a change in group members through July 2021. The evidence established that Respondent received FAP benefits as the only member of a benefit group from February 2020 through at least July 2021. As the only member of a FAP benefit group, Respondent's non-Michigan residency would render all FAP benefits during the alleged OI period to be over-issued.

The evidence established that Respondent resided outside of Michigan from September ■ 2020, through at least July 2021. The evidence further established that Respondent received \$■ in over-issued FAP benefits from MDHHS while residing outside of Michigan. Thus, MDHHS established a recipient claim of \$■ against Respondent.

MDHHS also requested a hearing to establish a FAP-related IPV disqualification period against Respondent. Exhibit A, p. 1. MDHHS may request hearings to establish an IPV disqualification. BAM 600 (January 2020) p. 5. MDHHS alleged the cause of the established OI was an IPV by Respondent.

The types of recipient claims are those caused by agency error, unintentional recipient error, and 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

³ The same policy applies to agency errors (BAM 705 (October 2018) p. 5), client errors (BAM 715 (October 2017) p. 5) or IPV's (BAM 720 (October 2017) p. 7). Thus, the OI may be established no matter what caused the OI.

purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards.⁴ 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).

Respondent should have been aware of the responsibility to report non-Michigan residency to MDHHS within 10 days after non-Michigan residency was established beginning September 4, 2020. MDHHS mailed Respondent Notices of Case Action on February 24, 2020, March 23, 2020, and May 13, 2021 approving Respondent for ongoing FAP benefits. Exhibit A, pp. 24-28 and 32-41. Each notice included boilerplate that clients are to report address changes to MDHHS within 10 days.⁵ *Id.*

The inclusion of boilerplate reporting responsibilities within documents sent to Respondent does not clearly and convincingly establish that Respondent read, understood, and/or retained the language. Other evidence was more indicative of an IPV.

Respondent applied for FAP benefits on May 1, 2021, and reported residency in Michigan. Exhibit A, pp. 16-20. As of May ■ 2021, Respondent was approximately five months away from completing a one-year residential lease in Nevada. Theoretically, someone could sign a residential lease and not remain in the residence; two reasons suggest that did not happen in the present case.

First, Respondent extended the lease. Respondent’s first lease covered a period through September 2021. Respondent signed a second lease on July ■ 2021 which extended the one-year lease through September 2022. Exhibit A, pp. 93-99. It is improbable that Respondent would extend a lease in Nevada unless Respondent resided in Nevada at the residence during the first lease.

Secondly, as discussed above, all of Respondent’s FAP expenditures from September 14, 2020, through February 23, 2022, occurred in Nevada. It is improbable that Respondent was a Michigan resident as of May ■ 2021 when all ongoing FAP expenditures from several months earlier and later occurred in Nevada, not Michigan.⁶

⁴ FAP is the Michigan equivalent of SNAP.

⁵ The notices dated February 24, 2020, and May 13, 2021, each included Change Reports which clients can submit to MDHHS to report changes. Exhibit A, pp. 29-31 and 42-44

⁶ Respondent had no FAP expenditures between April 13 and July 29, 2021.

Clients must truthfully answer all questions on forms and in interviews. BAM 105 (January 2018) p. 1. There was no evidence that Respondent could not understand the correct and clear reporting requirements.

Generally, clients have little incentive to receive FAP benefits from a state that is not their state of residence unless receiving duplicate benefits. This generality is based on FAP being a federally regulated program with states, by and large, applying comparable standards. MDHHS did not allege that Respondent received duplicate FAP benefits. However, other evidence suggested a possible motive for Respondent to not report a residency change. FAP-OI budgets in Michigan listed no income for Respondent. Exhibit A, pp. 180-188. However, Respondent submitted income documentation dated August 20, 2020, to his landlord which stated that Respondent had been employed since August 2019. Exhibit A, p. 146. Furthermore, Respondent's lease listed a household with a second person; there was no evidence that Respondent reported the same to MDHHS.

Respondent's misreporting of residency did not directly cause the entire OI of FAP benefits. However, Respondent's misreporting was highly consistent with a purposeful failure to report a change in residency. Based on the evidence, MDHHS clearly and convincingly established that Respondent committed an IPV by failing to report non-Michigan residency.

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 did not allege a previous FAP-related IPV by Respondent. Thus, a one-year disqualification is proper for Respondent's first FAP-related IPV.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent received OIs of \$[REDACTED] from November 2020 through January 2021 and \$[REDACTED] from May through July 2021 due to an IPV. The MDHHS requests to establish against Respondent a recipient claim of \$[REDACTED] and a one-year FAP-related IPV disqualification period are **APPROVED**.

CG/mp



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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Via-First Class Mail :

MOAHR
Respondent

[REDACTED]
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