STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES

IN THE MATTER OF:

[redacted]

Reg. No.: 15-006361
Issue No.: 2006; 3005
Case No.: [redacted]
Hearing Date: June 11, 2015
County: WAYNE-DISTRICT 35 (REDFORD)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION FOR CONCURRENT BENEFITS INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services (Department or DHHS), 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 Regulations, particularly 7 CFR 273.16 and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on June 11, 2015, from Detroit, Michigan. The Department was represented by [redacted], Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and Medical Assistance (MA) 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 for FAP?

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 April 29, 2015 to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, allegedly committed an IPV.

2. The OIG has requested that Respondent be disqualified from receiving program benefits.

3. Respondent was a recipient of FAP and MA benefits issued by the Department.

4. Respondent was aware of the responsibility to report changes in residence.

5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

6. The OIG indicates that the time period they are considering the FAP fraud period is January 1, 2014 to August 31, 2014.

7. The OIG indicates that the time period they are considering the MA OI period is January 1, 2014 to July 31, 2014.

8. During the alleged fraud period, Respondent was issued [redacted] in FAP and MA benefits from the State of Michigan.

9. During the alleged fraud period, Respondent was issued FAP benefits from the State of Ohio.

10. This was Respondent's first alleged IPV.

11. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services 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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148,

as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department of Health and Human Services (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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

- FAP trafficking OIs 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 or more, or

  - the total amount is less than $500, 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 (October 2014), pp. 12-13; ASM 165 (May 2013), pp. 1-7.

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.

BAM 700 (May 2014), 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. 1.

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); see also 7 CFR 273(e)(6). 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.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. BEM 222 (July 2013), p. 1. Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. BEM 222, p. 1. For example, FIP from Michigan and similar benefits from another state's cash assistance program. BEM 222, p. 1. As specified in the balance of BEM 222, benefit duplication is prohibited except for MA and FAP in limited circumstances. BEM 222, p. 1. A person cannot receive FAP in more than one state for any month. BEM 222, p. 3. Out-of-state benefit receipt or termination may be verified by one of the following: DHS-3782, Out-of-State Inquiry; Letter or document from other state; or Collateral contact with the state. BEM 222, p. 4.

A person is disqualified for a period of 10 years if found guilty through the Administrative Hearing Process, convicted in court or by signing a repayment and disqualification agreement (such as a DHS-826 or DHS-830) of having made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (July 2013), p. 1.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to update residency information for the purpose of receiving FAP benefits from more than one state.

First, the Department presented Respondent's application dated September 3, 2013, to show that she acknowledged her responsibility to report changes as required. See Exhibit A, pp. 11-49.

Second, the Department presented Respondent's Cash and Food Assistance Interim Report dated December 17, 2013, from the [redacted] See Exhibit A, pp. 50-51. This form appears comparable to the Department's redetermination form. See BAM 210 (October 2013), pp. 1-21.

Third, the Department presented Respondent's FAP transaction history. See Exhibit A, pp. 52-56. The FAP transaction history showed that from September 29, 2013 to September 6, 2014, Respondent used FAP benefits issued by the State of Michigan in

Michigan and Ohio (exclusively Ohio from April 3, 2014 to September 6, 2014). See Exhibit A, pp. 51-56.

Fourth, the Department presented correspondence from the State of Ohio to show that Respondent received FAP benefits simultaneously. See Exhibit A, pp. 64-65. The documentation confirmed that Respondent received FAP benefits in Ohio from April 2014, ongoing. See Exhibit A, pp. 64-65. However, due to Respondent's Cash and Food Assistance Interim Report dated December 17, 2013, the Department believes that Respondent received FAP assistance from January 1, 2014, ongoing. However, the Department failed to provide any evidence that Respondent in fact was issued FAP benefits for January 2014 to March 2014. Thus, the alleged IPV/OI period is amended to April 1, 2014 to August 31, 2014. Moreover, the Department presented Respondent's benefit summary inquiry, which showed that she received Michigan FAP benefits from April 1, 2014 to August 31, 2014. See Exhibit A, p. 66. As such, the evidence indicated that Respondent received FAP benefits simultaneously from April 1, 2014 to August 31, 2014.

Fifth, on or around April 15, 2015, the OIG agent testified that she spoke with the Respondent via telephone in which she claimed the following as to dual benefits: (i) she was back and forth (from Michigan to Ohio); (ii) she moved back to Ohio permanently in 2014 and did not reapply with the State of Michigan; therefore, she claimed she did not have to inform the Department of her move; and (iii) Respondent could not remember which family members were in her home during the alleged fraud period. See Exhibit A, p. 4.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of FAP benefits.

First, Respondent spoke to the OIG agent on or around April 15, 2015 and provided few reasons as to why she received benefits simultaneously. However, Respondent failed to be present at the hearing to rebut the Department's testimony and evidence.

Second, as stated previously, the evidence indicated that Respondent received FAP benefits simultaneously (Michigan and Ohio) from April 2014 to August 2014. See Exhibit A, pp. 64-66. In fact, Respondent's FAP transaction history showed that from September 29, 2013 to September 6, 2014, Respondent used FAP benefits issued by the State of Michigan in Michigan and Ohio (exclusively Ohio from April 3, 2014 to September 6, 2014). See Exhibit A, pp. 51-56. Respondent received FAP benefits simultaneously for at least five months. This evidence is sufficient to show that Respondent made a fraudulent statement or representation regarding her residence in order to receive multiple FAP benefits simultaneously from Michgian and Ohio. See BEM 203, p. 1. Therefore, there was clear and convincing evidence that Respondent committed an IPV of her FAP benefits because she failed to update residency information for the purpose of receiving FAP benefits from more than one state.

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, pp. 15-16; BEM 708 (April 2014), 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 lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is disqualified for ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

FAP Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

In the present case, the Department is entitled to recoup $[redacted] of FAP benefits it issued to Respondent from April 1, 2014 to August 31, 2014. See BAM 720, pp. 7 and 8 and Exhibit A, p. 66.

MA Overissuance

The Department initiates MA recoupment of an overissuance (OI) due to client error or intentional program violation (IPV), not when due to agency error. BAM 710 (July 2013), p. 1. When the Department receives the amount of MA payments, it determines the OI amount. BAM 710, p. 1. For an OI due to unreported income or a change affecting need allowances:

- If there would have been a deductible or larger deductible, the OI amount is the correct deductible (minus any amount already met) or the amount of MA payments, whichever is less.

- If there would have been a larger LTC, hospital or post-eligibility patient-pay amount, the OI amount is the difference between the correct and incorrect patient-pay amounts or the amount of MA payments, whichever is less.

BAM 710, p. 2. For an OI due to any other reason, the OI amount is the amount of MA payments. BAM 710, p. 2.

In this case, the Department alleges that an OI was present for Respondent's MA benefits in the amount of $[redacted]4 for the period of January 1, 2014 to July 31, 2014. See Exhibit A, p. 4. However, the Department failed to present any evidence of how it calculated the OI amount (i.e., summary of MA capitations). Therefore, the Department failed to establish an OI amount for Respondent's MA benefits. The Department will delete the MA OI and cease any recoupment action for the MA 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, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.

2. Respondent **did** receive an OI of FAP benefits in the amount of [redacted].

The Department is ORDERED as follows:

1) Delete the MA OI and cease any recoupment action for only the MA benefits; and

2) Reduce the OI to [redacted]only) for the period April 1, 2014 to August 31, 2014, and initiate recoupment**/**collection procedures in accordance with Department policy.

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for 10 years.

Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: June 16, 2015

Date Mailed: June 16, 2015

EJF/tm

NOTICE: The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

cc: [redacted]