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

IN THE MATTER OF:

[redacted]

Reg. No.: 15-006222
Issue No.: 3005
Case No.: [redacted]
Hearing Date: August 4, 2015
County: Wayne-District 41

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

HEARING DECISION FOR CONCURRENT BENEFITS 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 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 August 4, 2015, from Lansing, Michigan. The Department was represented by [redacted] 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 the Food Assistance Program (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 28, 2015, 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 and MA benefits issued by the Department.

4. On March 16, 2009, Respondent signed an Assistance Application (DHS-1171), acknowledging that he understood his failure to give timely, truthful, complete and accurate information could result in a civil or criminal action or an administrative claim against him. (Dept. Ex A, pp 11-18).

5. According to the FAP Purchase History, Respondent used his Michigan FAP benefits in Florida, Nevada and Arizona during the period of June 3, 2011 to August 10, 2011. During the period of August 17, 2011 to April 1, 2012, Respondent used his Michigan FAP benefits solely in Arizona. (Dept. Ex A, pp 24-26).

6. From August 1, 2011, through March 1, 2012, Respondent used $[redacted] in MA benefits, while residing in Arizona. (Dept. Ex A, pp 56-57)

7. Respondent received $[redacted] in FAP benefits and $[redacted] in MA benefits from the state of Michigan during the alleged fraud period of August 1, 2011, through March 31, 2012. If Respondent had properly reported that she had moved to New York, Respondent would have been entitled to receive $0 in FAP and MA. (Dept. Ex A, pp 54-57).

8. The Department alleges that Respondent received an overissuance in FAP benefits in the amount of $[redacted] and an overissuance of MA benefits in the amount of $[redacted]

9. Respondent was clearly instructed and fully aware of the responsibility to report all changes to the Department within 10 days.

10. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

11. This was Respondent's first alleged IPV.

12. 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 (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 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 overissuance amount for the FIP, SDA, CDC, MA and FAP programs is $500 or more, **or**
  - the total overissuance 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, p 12 (10/1/2014).

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 (10/1/2014), p 7; 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; 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.

Disqualification
A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p 15. 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.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the overissuance relates to MA. BAM 720, p 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (7/1/2013), p 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p 16.

In this case, this is Respondent's first IPV.

Overissuance
When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (10/1/2014).

Respondent applied for Michigan FAP benefits on March 16, 2009. It is well settled that a person *cannot* receive FAP or MA from the state of Michigan unless they are a resident of Michigan. BEM 220, p 1 (7/1/2014). Moreover, a client is responsible for reporting any change in circumstances that may affect eligibility or benefit level within ten days of the change. BAM 105, p 11 (1/1/2015).

By signing the aforementioned application, Respondent acknowledged he was aware he could be prosecuted for fraud and be required to repay the amount wrongfully received and that he must report all changes within 10 days of the change.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Here, the OIG provided credible testimony and other evidence demonstrating that Respondent, during the period of August 1, 2011, through March 31, 2012, was residing in the state of Arizona and used Michigan FAP benefits outside of Michigan in the states of Florida, Nevada and Arizona. The FAP Benefit Summary shows Respondent received $[redacted] a month from August, 2011, through March, 2012, for a total of $[redacted]

The Medicaid overissuance budgets show Respondent used $[redacted] in MA benefits during the fraud period.

Had Respondent properly reported his move to Arizona he would have been eligible to receive $0 in FAP and MA benefits. Hence, he received an overissuance of $[redacted] in FAP benefits and $[redacted] in MA benefits for the time period of August 1, 2011, through March 31, 2012.

As a result, the Department has shown by clear and convincing evidence that Respondent received an overissuance of benefits. The overissuance was due to Respondent failing to timely report his move to Arizona. According to BAM 700, the Department may recoup this overissuance.

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 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] and an OI of MA benefits in the amount of $[redacted] for a total of $[redacted]

The Department is ORDERED to initiate recoupment procedures for the amount of $[redacted] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.

Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **8/5/2015**

Date Mailed: **8/5/2015**

VLA/las

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]