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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: March 17, 2016
MAHS Docket No.: 15-010379
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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), 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 March 16, 2016, from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent from 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), Family Independence Program (FIP), 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 FAP and FIP?

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 [REDACTED] 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, FIP, and MA benefits issued by the Department.
4. On the Assistance Application signed by Respondent on [REDACTED] Respondent reported that she intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in her residence to the Department.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. Respondent began using FAP benefits outside of the State of Michigan beginning on or around January 2013.
8. The OIG indicates that the time period they are considering the FAP fraud period is [REDACTED].
9. The OIG indicates that the time period they are considering the FIP fraud period is [REDACTED].
10. The OIG indicates that the time period they are considering the MA OI period is [REDACTED].
11. During the alleged fraud period, Respondent was issued \$1,990.30 in FAP/FIP/MA benefits from the State of Michigan.
12. During the alleged fraud period, Respondent was issued FAP benefits from the State of [REDACTED].
13. This was Respondent's first alleged IPV.
14. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101 to .3131.

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.

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 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.

FAP IPV

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.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. BEM 222 (March 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. 2. 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. 3.

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 (e.g., DHS-826, 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 (October 2012), p. 1.

First, the Department presented Respondent's application dated [REDACTED], to show that she acknowledged her responsibility to report changes as required. See Exhibit A, pp. 11-32. In the application, Respondent indicated that she received benefits from the State of Ohio and even provided the caseworker's name. See Exhibit A, p. 12.

Second, the Department presented Respondent's FAP transaction history. See Exhibit A, pp. 33-36. The FAP transaction history showed that from [REDACTED], Respondent used FAP benefits issued by the State of Michigan out-of-state in Ohio, except she used benefits in Michigan on [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED]. See Exhibit A, pp. 33-36.

Third, the Department presented out-of-state correspondence to show Respondent received FAP benefits simultaneously. See Exhibit A, pp. 37-48. The evidence established that Respondent received FAP benefits simultaneously from the States of Ohio and Michigan during the alleged fraud period. See Exhibit A, pp. 37-55.

Based on the foregoing information and evidence, the Department has failed to establish a basis for a ten-year disqualification period. A review of Respondent's application indicated that she reported to the Department that she had received assistance from the State of Ohio. See Exhibit A, p. 12. The undersigned understands that this application occurred before the alleged IPV period. However, it also shows that Respondent did report to the Department that she received assistance from Ohio.

Moreover, there was no evidence to show that Respondent, during the alleged fraud period, made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203, p. 1. The Department did not present evidence to establish Respondent's intent during the alleged IPV usage. Therefore, the undersigned finds that the Department failed to establish by clear and convincing evidence that Respondent made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203, p. 1.

FAP and FIP IPV

In this case, the Department also alleged that Respondent committed an IPV of her FAP/FIP benefits because she failed to notify the Department that she no longer resided

in Michigan but continued to receive and use Michigan-issued benefits while out-of-state.

To be eligible, a person must be a Michigan resident. BEM 220 (March 2013), p. 1. For FAP cases, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. BEM 220, p. 1. Eligible persons may include persons who entered the state with a job commitment or to seek employment; and students (for FAP only, this includes students living at home during a school break). BEM 220, p. 1. For FAP cases, a person who is temporarily absent from the group is considered living with the group. BEM 212 (November 2012) p. 2. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 2.

For FIP cases, a person is a resident if all of the following apply:

- Is not receiving assistance from another state.
- Is living in Michigan, except for a temporary absence.
- Intends to remain in the state permanently or indefinitely.

BEM 220, p. 1.

For FIP cases, a temporarily absent person is considered to be living in the home when all of the following are true:

- Individual's location is known.
- There is a definite plan to return.
- The individual lived with the FIP eligibility determination group (EDG) before the absence (newborns are considered to have lived with the FIP EDG).
- The absence has lasted or is expected to last 30 days or less.

BEM 210 (January 2013), p. 2.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FIP/FAP benefits. There was no evidence to show that Respondent, during the alleged FIP/FAP fraud period, represented that she was in Michigan. The Department did not present any evidence to establish Respondent's intent during the alleged IPV usage. The Department failed to show any evidence that Respondent intentionally withheld information concerning an out-of-state move during the alleged FIP/FAP fraud period. In fact, the above concurrent receipt of benefits analysis, showed that Respondent reported to the Department that she received assistance from [REDACTED] and did not withhold this information. This shows to the undersigned that she is not purposely withholding information from the Department when reporting that she received benefits from [REDACTED]

In summary, in the absence of any clear and convincing evidence that Respondent intentionally withheld information for the purpose of maintaining Michigan FIP/FAP eligibility, the Department has failed to establish that Respondent committed an IPV of FIP/FAP benefits.

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 not satisfied its burden of showing that Respondent committed an IPV concerning FAP/FIP benefits. Therefore, Respondent is not subject to a disqualification under the FAP/FIP program. 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 715 (July 2014), p. 6.

As stated previously, there is no IPV present in this case. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715, p. 1.

A client error is present in this situation because the Respondent failed to report a change in residency in order to continue receiving FAP benefits from Michigan. A review of the transaction history indicated she used her FAP benefits issued by the State of Michigan out-of-state a majority of the time in [REDACTED] from [REDACTED] [REDACTED]. See Exhibit A, pp. 33-36. The evidence presented that Respondent no longer resided in Michigan, and that she moved to [REDACTED] during the OI period. Therefore, she was was not eligible for FAP benefits and was overissued FAP benefits

for any period she was ineligible to receive FAP benefits during this time period. See BEM 212, p. 2 and BEM 220, p. 1.

Applying the overissuance period policy, it is found that the appropriate OI period begin date is [REDACTED] BAM 715, pp. 4-5.

In establishing the OI amount, the Department presented a benefit summary inquiry and eligibility summary showing that Respondent was issued FAP benefits by the State of Michigan from [REDACTED], in the amount of \$1,200. See Exhibit A, pp. 51-54. It should be noted that the Department was already recouping \$20 monthly during the OI period in which the undersigned is reviewing. See Exhibit A, p. 51. The OIG agent testified that this recoupment was in regard to a different claim number and unrelated to the current issue. The amount of benefits received in an overissuance calculation includes: regular warrants and administrative recoupment (AR) deduction. See BAM 715, p. 7. For FAP only, the amount of Electronic Benefits Transfer (EBT) benefits received in the overissuance calculation is the gross (before AR deductions) amount issued for the benefit month. BAM 715, p. 7. Based on the above policy, the Department includes the AR in the calculation of the OI amount. See BAM 715, p. 7. Thus, the Department is entitled to recoup \$1,200 of FAP benefits it issued to Respondent for [REDACTED].

FIP Overissuance

As stated previously, the FAP overissuance concluded there was persuasive evidence that Respondent was not a Michigan resident. The evidence shows that the most probable explanation is that Respondent lived outside of Michigan. Thus, a client error is also present for the FIP benefits because she failed to report a change in residency in order to continue receiving FIP benefits from Michigan. BAM 715, p. 1. Thus, she was not eligible for FIP benefits and was overissued FIP benefits for any period she was ineligible to receive FIP benefits.

In establishing the OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued FIP benefits by the State of Michigan from [REDACTED], totaling \$306. See Exhibit A, p. 49. Thus, the Department is entitled to recoup \$306 of FIP benefits it issued to Respondent between [REDACTED].

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 also alleges that an OI was present for her MA benefits. The Department alleges that she failed to notify the Department that she no longer resided in Michigan but her MA benefits continued to pay her MA capitations/premiums while she was out-of-state. The Department's OIG indicates that the time period it is considering the OI period is [REDACTED].

For MA cases (non-institutionalized persons), an individual is a Michigan resident if either of the following apply:

- The individual lives in Michigan, except for a temporary absence, and intends to remain in Michigan permanently or indefinitely.
- The individual or a member of the MA fiscal group has entered the state of Michigan for employment purposes, and has a job commitment, or is seeking employment.

BEM 220 (March 2013), pp. 1-2.

For Group 2 FIP-Related MA, Healthy Kids and SSI-Related MA, a person's absence is temporary if for the month being tested:

- His location is known; **and**
- There is a definite plan for him to return home; **and**
- He lived with the group before the absence (**Note:** newborns and unborns are considered to have lived with their mothers); **and**
- The absence did not last, or is not expected to last, the entire month being tested unless the absence is for education, training, or active duty in the uniformed services of the U.S.

BEM 211 (November 2012), pp. 2-3.

As stated previously, a FAP/FIP client error is present in this situation because Respondent failed to notify the Department of her change in residency and an OI amount was established. See BAM 715, p. 1. Therefore, an MA client error is also

present in this situation because Respondent failed to notify the Department of her change in residency. See BAM 710, p. 1.

Applying the overissuance period policy, it is found that the appropriate OI period begin date is [REDACTED]. See BAM 710, p. 1.

In establishing the OI amount, BAM 710 states that for an OI due to any other reason, the OI amount is the amount of MA payments. See BAM 710, p. 2. The Department presented a summary of the MA premiums/capitations paid on her behalf, which totaled \$484.30. See Exhibit A, pp. 56-60. Thus, the Department is entitled to recoup \$484.30 of MA benefits it issued to Respondent for [REDACTED].

In summary, the total OI amount is \$1,990.30 as follows: (i) \$1,200 of FAP benefits it issued to Respondent for [REDACTED]; (ii) \$306 of FIP benefits it issued to Respondent between [REDACTED]; and (iii) \$484.30 of MA benefits it issued to Respondent for [REDACTED].

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 not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP/FIP/MA benefits in the amount of \$1,990.30.

The Department is **ORDERED** to initiate recoupment/collection procedures for the amount of \$1,990.30 in accordance with Department policy.

EF/hw


Eric Feldman

Administrative Law Judge

for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]