



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: September 15, 2016
MAHS Docket No.: 15-020667
Agency No.: [REDACTED]
Respondent: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION FOR CONCURRENT BENEFITS
INTENTIONAL PROGRAM VIOLATION

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 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, an in-person hearing was held on September 8, 2016, from Detroit, Michigan.

MDHHS was represented by [REDACTED] regulation agent of the Office of Inspector General (OIG). Respondent appeared and testified.

ISSUES

The first issue is whether Respondent committed an Intentional Program Violation (IPV) by receiving Food Assistance Program (FAP) and Medical Assistance (MA) benefits from multiple states.

The second issue is whether Respondent received an overissuance of 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. Respondent received ongoing food and medical benefits from the State of Tennessee.

2. On [REDACTED], Respondent applied for FAP and MA benefits from the State of Michigan.
3. Respondent's application purposely failed to report that she received ongoing benefits from the State of [REDACTED].
4. From [REDACTED], Respondent received State of Michigan issued FAP benefits of [REDACTED] and medical benefits costing [REDACTED]
5. Respondent continued receiving food and medical benefits from [REDACTED] through [REDACTED]
6. On [REDACTED], MDHHS requested a hearing to impose a 10-year IPV disqualification against Respondent and to establish an overissuance against Respondent for [REDACTED] in Food Assistance Program (FAP) benefits and [REDACTED] in MA benefits.

CONCLUSIONS OF LAW

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. MDHHS (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

MDHHS requested a hearing, in part, to establish that Respondent committed an IPV. [MDHHS] may request a hearing to... establish an intentional program violation and disqualification; see BAM 720, IPV Hearing. BAM 600 (February 2013), p. 3.

[For FAP benefits,] the client/authorized representative (AR) is determined to have committed an IPV by [a] court decision, an administrative hearing decision, or the client signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830,

Disqualification Consent Agreement or other recoupment and disqualification agreement forms. *Id.* There is no evidence that Respondent signed a DHS-826 or DHS-830; there is also no evidence that a court decision found Respondent responsible for an IPV. Thus, MDHHS seeks to establish via administrative hearing that Respondent committed an IPV.

Generally, MDHHS is to pursue IPV hearings when an IPV is suspected. 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 their reporting responsibilities.

BAM 720 (February 2013, p. 1 and 7 CFR 273(e)(6).

IPV is suspected when there is **clear and convincing** (emphasis added) evidence that the client or CDC provider has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. *Id.* A clear and convincing threshold to establish IPV is a higher standard than a preponderance of evidence standard and less than a beyond any reasonable doubt standard. It is a standard which requires reasonable certainty of the truth; something that is highly probable. *Black's Law Dictionary* 888 (6th ed. 1990). 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).

MDHHS alleged Respondent concurrently received FAP and MA benefits from [REDACTED] and Michigan. MDHHS presented documents to verify the allegation. MDHHS further alleged Respondent purposely failed to report to MDHHS she received benefits from [REDACTED] while pursuing benefits from Michigan. If established, the allegation could justify an IPV disqualification.

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 (3/2013), p. 1. A person cannot receive FAP in more than one state for any month. *Id.*, p. 2.

MDHHS presented a Benefit Summary Inquiry (Exhibit 1, p. 48) dated [REDACTED], from Michigan's benefit history database. The document verified Respondent received [REDACTED] of FAP benefits in [REDACTED]. The document also verified Respondent received [REDACTED] in benefit months from [REDACTED] through [REDACTED]. MDHHS also presented MDHHS also presented Expenditure Summaries (Exhibit 1, pp. 51-52) stating Respondent and her son received monthly medical coverage over the period from [REDACTED] [REDACTED] at a cost of [REDACTED] each month.

MDHHS presented a letter and benefit history (Exhibit 1, pp. 49-50) dated [REDACTED] from the State of [REDACTED]. The documents stated SNAP (Supplemental Nutritional Assistance Program) and Medicaid benefits were issued to Respondent and her son from [REDACTED]. The letter also stated Respondent's SNAP issuance from July 2013 was eventually expunged after the benefits were not used. Presented evidence sufficiently established Respondent received FAP benefits and medical coverage from [REDACTED] from two different states.

MDHHS presented Respondent's Assistance Application (Exhibit 1, pp. 11-44). The application was electronically signed by Respondent on [REDACTED]. The application stated that Respondent's electronic signature including an acknowledgement of reading an understanding of the Rights & Responsibilities section which states that clients must report changes within 10 days.

Respondent's only argument was that she did not commit an IPV because she did not receive benefits from Michigan from [REDACTED]. Petitioner alleged the presented Assistance Application was not submitted by her.

Respondent presented a police report (Exhibit A, pp. 1-2) dated [REDACTED]. The police report alleged an unknown person on [REDACTED] used Respondent's information to obtain loan monies for two colleges, neither of which was attended by Respondent.

Respondent's presentation of a police report alleging fraud shortly after the IPV is consistent with her contention of fraud. Respondent's credibility is also increased by the police report being filed before any pursuit of fraud by MDHHS. Despite the police report, fraud does not appear to be the cause of dual assistance.

For Respondent's testimony to be believed, someone besides Respondent had to complete an Assistance Application solely for the purpose of obtaining FAP and medical benefits. Given presented evidence, such a happening is improbable.

The Assistance Application included Respondent's and her child's date of birth. This information might be hijacked by a criminal. The application also included her child's father's name and date of birth, such information is unlikely to be known to persons other than Respondent. This consideration supports rejecting Respondent's claim of fraud by another.

It is expected that someone with an intent to commit fraud might apply for food and/or cash benefits. It is peculiar that a person with an intent to steal someone's benefits would also apply for medical coverage. This consideration lessens the possibility that Petitioner's identity was hijacked.

Most notably, if a person applied online for FAP and MA benefits with the intent to steal the benefits, it would be expected that the person would use an address other than Respondent's actual address. Respondent testified the address listed in the application

was her mother's address. Petitioner testimony further conceded she used the address throughout [REDACTED] (though she denied using it during the alleged fraud period).

It is found Respondent applied for FAP and MA benefits from the State of Michigan on [REDACTED]. The analysis will proceed to determine the consequences of Petitioner's application.

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 his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (October 2012), p. 1. MDHHS seeks to impose a 10-year disqualification against Respondent.

For a 10 year disqualification, MDHHS must establish that Respondent purposely misrepresented her residency. MDHHS presented no evidence other than receipt of benefits from multiple states. The dual assistance in the present case could have been caused by a failure by Respondent to update her residency rather than a misrepresentation of residency.

MDHHS presented no evidence to support an allegation that Respondent purposely misrepresented her residence. Despite the lack of evidence from MDHHS, Respondent unwittingly boosted the MDHHS claim.

Respondent not only alleged she did not complete the presented application, her testimony conceded she did not live in Michigan at the time of application submission. With Respondent's claim of application forgery already rejected, her testimony of [REDACTED] residency could be construed as support that she lied about Michigan residency on the benefit application.

Presumably, Respondent's testimony of [REDACTED] residency was only made to support her claim that she was the victim of fraud. It was not credible concerning her actual residency at the time of application. Without any other evidence of Respondent's residency at the time of application, it cannot be determined where Respondent lived when she submitted the Assistance Application.

It is also notable that Petitioner is accused of receiving only benefits for 3 months from multiple states. Generally, a client lying about residency for the purpose of receiving benefits from multiple states intends to collect benefits from multiple states for longer than 3 months.

Not only was the fraud time period relative small, but it was not disputed that Petitioner received FAP benefits for July 2013 from Tennessee and did not spend them. This is consistent with lacking fraudulent intent to lie about residency. It is found MDHHS failed to establish an IPV justifying a 10 year disqualification.

The standard disqualification period is used in all instances except when a court orders a different period... BAM 720 (February 2013), p. 13. [MDHHS is to] apply the following disqualification periods to recipients determined to have committed IPV... one year for the first IPV, two years for the second IPV [, or] lifetime for the third IPV. *Id.*

MDHHS alternately alleged Respondent purposely failed to report dual assistance when applying and/or receiving benefits. MDHHS cited Respondent's lack of response to an application question asking if Respondent received benefits from any other state. It is possible Respondent inadvertently overlooked the application question. Even if she did, Respondent surely knew that she was not eligible to simultaneously receive FAP and/or medical benefits from Michigan and [REDACTED]

It is found Respondent purposely failed to report to MDHHS receiving benefits from the State of [REDACTED] while applying for State of Michigan benefits. Respondent's purposeful failure to report receipt of benefits from [REDACTED] justifies imposing a 1 year disqualification.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance (OI). BAM 700 (January 2013), p. 1. An... OI... is the amount of benefits issued to the client group in excess of what they were eligible to receive. *Id.* Recoupment is a DHS action to identify and recover a benefit OI. *Id.*

[For FAP benefits,] DHS may pursue an OI whether it is a client-caused error or DHS error (see *Id.*, p. 5). Client and Agency error OIs are not pursued if the estimated OI amount is less than \$250 per program. *Id.*, p. 7. [For MA benefits, MDHHS is to] initiate recoupment of an overissuance (OI) due to client error or intentional program violation (IPV), not when due to agency error (see BAM 700 for definitions).

All State of Michigan-issued benefits to Respondent while she received State of [REDACTED] benefits are found to be overissued. Accordingly, MDHHS established that Respondent received an overissuance of [REDACTED] in FAP benefits and [REDACTED] in MA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish that Respondent committed an Intentional Program Violation justifying a 10 year disqualification. The MDHHS actions are **PARTIALLY DENIED**.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MHHS established that Respondent committed an IPV justifying a one-year disqualification penalty. It is further found that MDHHS established that Respondent received an overissuance of [REDACTED] in FAP benefits and [REDACTED] in MA benefits from [REDACTED]. The actions requested within the MDHHS hearing request are **PARTIALLY AFFIRMED**.

CG/hw



Christian Gardocki
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]