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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: May 19, 2016
MAHS Docket No.: 15-023213
Agency No.: [REDACTED]

[REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION FOR 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 Regulation (CFR), particularly 7 CFR 273.16 and 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on March 9, 2016, from Detroit, Michigan. Respondent appeared pro se. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and Medical Assistance benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from 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 December 18, 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. The Department's OIG indicates that the time period it is considering the fraud period is July 1, 2015 through November 30, 2015.
5. During the fraud period, Respondent was issued [REDACTED] in FAP benefits and [REDACTED] in MA benefits by the State of Michigan.
6. The Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
7. The Department alleges that Respondent received an OI in FAP benefits totaling the amount of [REDACTED] and an OI of MA benefits totaling [REDACTED].
8. This was Respondent's first alleged IPV.
9. 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 (formerly the Department of Human Services) Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

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-.3011.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Health and Human Services (formerly known as the Department of Human Services) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

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 (2014).

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 700 (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 (2014).

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.

The federal Food Stamp regulations read in part:

- (c) Definition of Intentional Program Violation. Intentional Program Violation 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 the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an

automated benefit delivery system (access device). 7 CFR 273.16(c).

(6) Criteria for determining intentional program violation. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section. 7 CFR 273.16(c)(6).

The Department's OIG requests IPV hearings for cases when:

- benefit overissuance are not forwarded to the prosecutor.
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
- the total overissuance amount is \$500 or more, or
- the total overissuance amount is less than \$500, and
 - the group has a previous intentional program violation, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance,
 - the alleged fraud is committed by a state/government employee.

BAM 720 (2014), p. 12.

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. BAM 720, p. 15.

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 (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 concurrent receipt of benefits. BAM 720, p. 16.

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that the respondent intentionally made a false or misleading statement, or intentionally withheld information with the intention to commit an IPV, with regard to the

FAP program. Thus, the Department must not only prove that the respondent committed an act, but that there was intent to commit the act.

In this case, the Department has established that respondent was aware of the responsibility to report all changes to the Department. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities.

All that being said, the Department, and this investigating OIG agent, has failed to demonstrate an error, an overissuance, or a violation of any particular policy. To wit: The Office of the Inspector General spent months investigating this case, conducted several interviews, launched a disqualification hearing, and frightened the Respondent into believing that she was in serious legal trouble, ***over an issue that was not, in any way, shape, or form, a violation of policy.*** In fact, certain statements by the investigating agent in the investigation report leads the Administrative Law Judge to believe that the investigating agent knew this, yet still pursued a case and recoupment, making this one of the most egregious cases encountered in the undersigned's career.

The current case involves the Respondent's alleged failure to report possession of an [REDACTED] to the Department. Leaving aside the fact that, before the alleged fraud period in question, Respondent did report this [REDACTED] (on January 31, 2015; see Department Exhibit 3), the simple fact of the matter is that **this [REDACTED] was not a countable asset for any of the programs that are at issue.** In other words, even if Respondent didn't report the [REDACTED] (she did), it doesn't matter because the asset wasn't countable to the programs in question, which made any alleged misrepresentation meaningless.

The OIG agent investigating this case knew this, at least with regards to MA benefits. In the Investigative Report (Department Exhibit 2), the agent wrote "Bridges Eligibility...records show that (Respondent) received FAP...and MA-HMP (Healthy Michigan Plan-MAGI related medical which does not count assets)".

Indeed, policy found at BEM 400, pg.3 (2016) specifically states that MAGI related MA, the program for which the OIG seeks recoupment, **has no asset limit.** In other words, the OIG agent in question was seeking recoupment of \$5479.65 for failing to disclose assets for a program that has no asset limit. In fact, the sentence after the policy statement of no asset limit for MAGI-related MA program says "Do not deny or terminate those benefits because of a refusal to provide asset information or asset verification requested for purposes of determining eligibility for a category or program that has an asset test, such as FIP".

Thus, Respondent was not even required to disclose assets with regard to this program. However, this particular OIG agent thought it prudent to pursue an Intentional Program Violation for failing to disclose assets. Why the OIG agent thought this was prudent, when they were aware, per the Investigation Report, that there was no asset test for the

Respondent's MA program, is beyond the knowledge of the undersigned; certainly no explanation was given at the hearing.

Furthermore, the OIG has failed to provide a basis for the requested recoupment of [REDACTED]. This number appears nowhere in the case file, with the exception of the Hearing Summary (Department Exhibit 1), and the aforementioned Investigation report. This number appears to have been pulled out of thin air, and has no support at any point. Thus, even if Respondent failed to report the asset (she did), and the asset was countable for MAGI-related MA (it's not), there could be no IPV or recoupment, because there is no proven overissuance.

The alleged FAP IPV issue is not much more favorable to the Department or the OIG.

The asset in question was an [REDACTED]. Department Exhibit 5. It is titled "[REDACTED]" in all documentation. At the top of each page of the pages documenting the asset are the words "[REDACTED]". Respondent reported it as an [REDACTED]. There is no question that this asset is an [REDACTED].

BEM 400, pg. 24, on Retirement plans:

This section is about the following types of assets:

- Individual retirement accounts (IRAs).
- Keogh plans (also called H.R. 10 plans).
- 401k plans.
- Deferred compensation.
- Pension plans.
- Annuities-- An annuity is a written contract establishing a right to receive specified, periodic payments for life or for a term of years.

FAP

All retirement accounts are excluded.
(emphasis added)

Retirement accounts, including IRA's are excluded from FAP asset calculations. This is not an interpretation that requires torturous legal language to arrive at—this is a plain reading. To repeat: **All retirement accounts are excluded.** There is no other way, reasonable or unreasonable, to read this policy.

Despite this policy (which has been in policy since FAP asset limits were introduced on October 1, 2011), the OIG investigated and sought recoupment on the basis of the IRA in question, counting it as an asset, and declaring Respondent asset ineligible. There

are two conclusions here, neither of which reflect well on the investigating agent: Either the investigating agent purposely ignored the policy, or the investigating agent pursued a quasi-criminal action and months of investigation without reading the policy they were basing the action upon.

Given that the investigating agent was perfectly aware that there was no asset test for MAGI-related MA, the undersigned suspects the former, but is willing to accept ignorance of the law and policy as the excuse with regards to this unwarranted pursuit of recoupment of FAP benefits.

The end result of this is that the Department has not only utterly failed to prove its case by clear and convincing evidence, the Department has utterly failed to articulate any violation of policy. Regardless of whether the asset was reported (it was) the asset in question was not a countable asset for either of the programs, and policy at BEM 400 is quite explicit about that. If it was not countable, Respondent was not ineligible for benefits, and this entire case was pursued and conducted for no reason.

The asset in question simply didn't matter, and yet the OIG launched a full investigation, spent several months putting together a case, intimidated the Respondent through quasi-criminal threats, accused Respondent of fraud, pursued over six thousand dollars in recoupment, had respondent's FAP benefits closed, and subjected Respondent to a disqualification hearing in which their reputation was impugned.

What the OIG didn't do was read or in any way familiarize themselves with policy so as to prevent bringing this case in the first place.

While the preceding may be harsh, the undersigned has rarely encountered a case so egregiously based on lack of knowledge or disregard of policy, and as such felt special attention was warranted. Respondent has been put through an ordeal that should never have happened, and the undersigned would be remiss to have treated this like an ordinary case.

Therefore, the Administrative Law Judge holds that the Department has completely failed to present clear and convincing evidence with regards to an Intentional Program Violation, much less an error that would require recoupment.


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. Respondent did not commit an IPV by clear and convincing evidence.
2. The Department has not established that respondent received an overissuance in the amount of [REDACTED] in FAP benefits and [REDACTED] in MA benefits.

The Department is ORDERED delete the OI and cease any recoupment in the current matter.

RC/tm



Robert J. Chavez
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]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]