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: June 10, 2016
MAHS Docket No.: 15-014036
Agency No.: [redacted]
Petitioner: Department of Health and Human Services
Respondent: [redacted]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 via three-way telephone conference on May 18, 2016, from Detroit, Michigan. The Department of Health and Human Services (Department) was represented by [redacted] Assistant Attorney General (AAG). Respondent was represented by [redacted], her counsel. Appearing as witnesses on behalf of the Department were [redacted], Regulation Agent of the Office of Inspector General (OIG); [redacted] of the Bureau of Child and Adult Care Licensing (BCAL); [redacted]; [redacted]; and [redacted]. [redacted] (JW) appeared as a witness on behalf of Respondent.

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?

2. Should Respondent be disqualified from receiving benefits for FAP?

3. Did Respondent receive an overissuance (OI) of FAP benefits totaling $20,755 and Medicaid (MA) benefits totaling $5472.52 that the Department is entitled to recoup?

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 FAP benefits between April 2010 and May 2015 (Exhibit A, pp. 134-135, 151-152, 189-193, 245-247, 280-281). Her two minor children received MA benefits between March 2010 and May 2015 (Exhibit A, pp. 410-423).

2. In applications, redeterminations, and semi-annual contact reports Respondent completed and submitted to the Department between April 2010 and May 2015, she did not list her children's father, JW, as a household member (Exhibit A, pp. 26-76).

3. In connection with a front end eligibility (FEE) investigation commenced in March 2015, the Department concluded that JW was a member of Respondent's household.

4. The Department's OIG filed a hearing request on July 24, 2015 to establish that Respondent committed an IPV concerning her FAP benefits and was overissued FAP and MA benefits.

5. The OIG has requested that Respondent be disqualified from receiving FAP program benefits due to the IPV.

6. The Department's OIG indicates that the time period it is considering the FAP fraud period is April 1, 2010 to May 31, 2015 (FAP fraud period) and the MA fraud period is March 1, 2010 to May 31, 2015 (excluding January 1, 2012 to June 30, 2012 and January 1, 2014 to March 31, 2014) (MA fraud period).

7. The Department alleges that Respondent received an OI in FAP benefits in the amount of $20,755 during the FAP fraud period and an OI in MA benefits in the amount of $5472.52 during the MA fraud period.

8. This was Respondent's first alleged IPV.

CONCLUSIONS OF LAW

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

- Willful overpayments of $500.00 or more under the Adult Home Help program.
- 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 amount for the Family Independence Program, State Disability Assistance, Child Development and Care, 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), p. 5; ASM 165 (May 2013), pp. 1-2**.**

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.

In this case, the Department alleges that Respondent committed an IPV because she intentionally failed to report that JW, the father of her two minor children, was a household member. As a result, JW's income was not considered in calculating her FAP benefit eligibility and amount and Respondent was overissued FAP benefits.

The Department contends that JW was living together with Respondent and their two minor children in Respondent's home on [redacted] in [redacted] during the relevant FAP fraud period and that his times away from the [redacted] residence were temporary absences. Parents and their children under 22 years of age who live together must be in the same FAP group. BEM 212 (January 2010 and July 2014), p. 1. A person is considered living with the group even when temporarily absent from the group if all of the following are true: (i) the person's location is known; (ii) the person lived with the group before an absence; and (iii) there is a definite plan for return. BEM 212, p. 3. With limited exceptions, the income of all group members is considered in calculating FAP eligibility and benefit amounts. BEM 550 (January 2010 and February 2014), pp. 2-4; BEM 556 (January 2010 and July 2013), p. 2.

At the hearing, Respondent's counsel questioned JW. JW denied living at [redacted] with Respondent, stating that he moved out of a home he shared with ex-wife on [redacted] in [redacted] after their divorce in 2008, to his daughter's home for a few months, to the home he shared with a woman named [redacted] on [redacted] until 2011, (excluding those periods he worked out of state), and to the trailer he leased on [redacted] in [redacted] in 2013 to the date of the hearing. He explained that he was experiencing personal hardships between 2011 and 2013 and did not have a permanent residence during this time. He admitted that he sometimes visited his children at

Respondent's home and stayed at the home but denied going back there on a consistent basis.

JW had a lease for the [redacted] trailer. At the time he signed the lease in March 2013, the state identification card used to verify his identity showed a [redacted] address. (Exhibit A, pp. 103-105.) A report by the OIG agent who made an unannounced visit to the [redacted] trailer on March 18, 2015 concluded that the trailer looked like a primary residence (Exhibit A, p. 102).

At the hearing, the OIG agent acknowledged that the Secretary of State documents for vehicles registered to JW listed JW's [redacted] address (Exhibit A, pp. 77-78); JW listed his [redacted] address as his address of record with his employer from August 21, 2014 to September 27, 2014 (Exhibit A, p. 79); and he listed his [redacted] address as his address of record with his employer from September 29, 2014 to February 27, 2015 (Exhibit A, p. 84). A database search listing possible addresses for JW shows the [redacted], [redacted], and [redacted]. It also shows a [redacted] in [redacted] but does not show Respondent's [redacted] (Exhibit A, pp. 86-87).

The Department argued that Respondent was purposely concealing the fact that JW lived in the home with her and pointed out that she had identified JW as a household member to parties other than the Department and that neighbors of both JW and Respondent believed JW lived with Respondent. The Department presented, among other things, the following evidence:

- a Bureau of Children and Adult Licensing (BCAL) supplemental application Respondent signed March 15, 2010 in connection with applying for a daycare license that listed JW as a member of her household (Exhibit A, p. 112);
- a BCAL special investigation report dated December 9, 2008 that concluded that JW was an adult member of Respondent's household, with Respondent reporting that JW had lived in her home since August 2008 with her and their then [redacted] son (Exhibit A, pp. 117-121);
- the testimony of [redacted], a BCAL child care consultant, concerning the BCAL applications and investigation;
- school records signed by Respondent on August 24, 2014 showing that JW's address was Respondent's [redacted] address (Exhibit A, pp. 99-100);
- testimony of [redacted], school secretary and custodian of the records;
- testimony by Respondent's neighbor [redacted];
- statements by JW's [redacted] neighbor; and
- testimony of [redacted], the regulation agent who headed the FEE investigation.

The Department pointed out that JW's address is listed as Respondent's [redacted] address in one of the children's school registration/emergency forms signed by Respondent on August 24, 2014 (Exhibit A, pp. 99-100). However, [redacted] the school secretary who maintained student records at the children's school, testified that the information in the document referenced by the Department was populated by the school's computer. Respondent's failure to correct information on the form, which is informative and was not completed by Respondent, would not establish by clear and convincing evidence that JW resided in Respondent's home with her.

Likewise, the fact that BCAL determined in a December 2008 investigation that JW was an adult household member of Respondent's household and, per Respondent's statement, had resided in the home since August 2008 (Exhibit A, pp. 116-121), did not establish that he resided in the home during the FAP fraud period. The fact that Respondent reported JW as a household member in the March 2010 BCAL supplemental application she completed in connection with her day care application (Exhibit A, p. 112), but did not report him as a household member in the MA redetermination she signed on January 26, 2010; the semi-annual contact report she submitted to the Department on February 26, 2010; or the FAP redetermination she signed on August 28, 2010 (Exhibit A, pp. 35, 38, 41), creates some inconsistency in Respondent's reporting but is nevertheless insufficient to establish that JW continued to be a member of Petitioner's household after March 2010 and during the FAP fraud period, particularly where Respondent no longer reported that JW was in her home in the supplemental day care BCAL application she signed May 10, 2013 (Exhibit A, p. 110).

The testimony of [redacted], Respondent's [redacted] neighbor, and statements from JW's [redacted] neighbor failed to establish that JW lived at the [redacted] home or that he was there on a monthly basis. Furthermore, it is noted that JW was the father of Respondent's two minor children. JW did not deny visiting the children at Respondent's home or staying there occasionally when he visited them and helping with household chores. The fact that JW came to the home and stayed there periodically did not establish that he lived there or that there was a definite plan for his return there. The fact that JW paid child support to Respondent for the two children further supports the conclusion that JW was not residing with Respondent and the children in Respondent's home.

The evidence presented, considered in its totality, fails to establish, by clear and convincing evidence, that JW lived with Respondent and their children at the [redacted] address and that his absences from the home were temporary absences as defined in BEM 212. To the contrary, the evidence at best establishes that during the FAP fraud period JW resided outside Respondent's home and was temporarily absent from his home when he occasionally visited and stayed with Respondent and their children at Respondent's home. Accordingly, the Department has failed to establish, by clear and convincing evidence, that Respondent intentionally withheld information for the purpose of maintaining or preventing reduction of FAP benefits. Therefore, the

Department has not established that Respondent committed an IPV concerning her FAP case.

Disqualification

A client who is found to have committed a FAP IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, pp. 15-16. Clients are disqualified for FAP IPVs 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. A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 17.

In this case, the Department failed to establish by clear and convincing evidence that Respondent committed a FAP IPV. Accordingly, Respondent is **not** subject to disqualification from the FAP program.

Overissuance

The Department also alleges a FAP and MA OI and seeks to recoup the overissued benefits.

FAP OI

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 FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (January 2016), pp. 1, 6; BAM 705 (January 2016), p. 6.

The Department alleges that Respondent was overissued FAP benefits between April 1, 2010 and May 31, 2015 because JW's employment income was not considered in the calculation of her FAP eligibility and benefit amount. The Department's overissuance case is dependent on the finding that JW lived with Respondent and their children and, because he was a mandatory group member, his income should have been included in calculation of Respondent's FAP eligibility and benefit amount. BEM 212, p. 1; BEM 550, pp. 2-3. As discussed above, the evidence fails to establish that Respondent and JW lived together between April 2010 and May 2015. Because the Department failed to establish that JW was a mandatory member of Respondent's FAP group, his income would not be included in the calculation of her FAP. Therefore, the Department is not eligible to recoup or collect any FAP benefits issued to Respondent between April 2010 and May 2015.

MA OI

The Department also alleges an OI of MA benefits to Respondent's two minor children between March 1, 2010 and May 31, 2015 (excluding January 2012 to June 2012 and January 2014 to March 2014). The Department may initiate recoupment of an MA overissuance only due to client error or IPV, not when due to agency error. BAM 710

(October 2015), p. 1. A client error OI occurs when the client received more benefits than entitled to because the client gave incorrect or incomplete information to the Department. BAM 700, p. 5.

Until January 2014, MA eligibility for children was based on income of the child and the child's parents who lived with the child. BEM 211 (January 2010 and July 2013), pp. 2-3, 5. The evidence, as discussed above, fails to establish that JW resided with Respondent during the FAP fraud period running from April 2010 to May 2015. Therefore, JW was not a member of the children's MA fiscal group and his income would not be considered in determining their income eligibility for April 2010 to May 2015.

The supplemental application Respondent submitted to the Department on March 15, 2010 in connection with applying for a daycare license that listed JW as a member of her household (Exhibit A, p. 112) was sufficient to establish that, for purposes of the children's MA eligibility, JW lived with Respondent and the children in March 2010. See BEM 211 (January 2010), pp. 1-2. Therefore, JW was a member of both children's MA fiscal groups in March 2010, and his income would be considered in determining the children's MA eligibility only for March 2010.

Respondent's children had a MA fiscal group size of three once JW is included in their respective MA groups. See BEM 211, p. 4. The evidence shows that in March 2010, both children received full-coverage MA under the Other Healthy Kids (OHK) program (Exhibit A, p. 41). At the time, OHK coverage was available to children under age 19 when their fiscal group's net income did not exceed 150% of the federal poverty level (FPL) for a three-person household, or $2289. BEM 131 (February 2010), p. 2; RFT 246 (April 2009), p. 1.

To establish that Respondent's children were ineligible for MA in March 2010 when JW's income was included in the calculation of their income eligibility, the Department presented a MA OI budget for March 2010 (Exhibit A, pp. 405-409). The MA OI budget for March 2010 shows that the Department considered JW's income for March 2010 as $5287. The only evidence of employment income for March 2010 presented by the Department is from the consolidated inquiry which shows JW's quarterly employment earnings. The only income showing for the first quarter of 2010, which includes the month of March, is $1161 (Exhibit A, p. 126). Therefore, the evidence presented does not support the Department's calculation of JW's income for March 2010. As such, the Department's budget fails to establish that JW's income for March 2010 would make the children ineligible for MA, and the Department has failed to establish an MA OI for March 2010.

Beginning January 2014, a child's eligibility for MA is determined in accordance with modified adjusted gross income (MAGI) methodology. Michigan Department of Community Health MAGI-Related Eligibility Manual (MREM); See also https://www.medicaid.gov/medicaid-chip-program-information/program-

information/downloads/modified-adjusted-gross-income-and-medicaid-chip.pdf. The Medicaid eligibility summary for each child shows that between January 2014 and May 2015 they each received full-coverage MA under Low-Income Family (LIF) or Healthy Kids (HK) categories (Exhibit A, pp. 410-412, 417-419). After January 1, 2014, LIF and HK are MAGI-related MA categories that are available when household income, calculated in accordance with MAGI methodology, does not exceed 160% of the federal poverty level (FPL).

Unlike FIP-related MA eligibility, which requires consideration of who lives together to determine the child's fiscal group size, for MAGI eligibility purposes, the child's household size is based on the principles of tax dependency. In this case, Respondent reported that the children lived with her but JW claimed them as his tax dependents (Exhibit A, pp. 73). . For a child who is claimed as the tax dependent of a noncustodial parent, the child's household consists of his parents and siblings. MREM §§ 5.1, 5.2. Therefore, for MAGI-related MA purposes, each of the children had a household of four consisting of Respondent, JW, the child and the child's sibling, and the calculation of the children's MAGI-MA eligibility, therefore, would have included JW's income. MREM §7.1 and 7.2.

However, there was no evidence presented that Respondent ever misrepresented the tax filing status of any of the parties at issue. Because the Department was, or should have been, aware of the parties' tax filing status, it should also have been aware that JW's income should be considered in determining MAGI eligibility. Therefore, to the extent JW's income was not considered in determining the children's MA eligibility for periods on and after January 2014, the error was the Department's, not Respondent. Because the Department may not recoup for an MA OI due to agency error, the Department has failed to establish that it is eligible to recoup for any MA benefits received by Respondent's children from January 2014 to May 2015.

Under the evidence presented, the Department has failed to establish a FAP or MA OI.

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 **not** established by clear and convincing evidence that Respondent committed an IPV.

2. Respondent did **not** receive an OI of FAP benefits in the amount of $20,755.

3. Respondent did **not** receive an OI of MA benefits in the amount of $5472.52

The Department is ORDERED to delete the OI and cease any recoupment action.

ACE/tlf

Alice C. Elkin
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

[redacted]

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