



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: December 12, 2016
MAHS Docket No.: 16-009063
Agency No.: [REDACTED]
Petitioner: OIG
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 on [REDACTED], from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent 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 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 FAP benefits?
3. Did Respondent receive an overissuance (OI) of FAP and Medical Assistance/Medicaid (MA) benefits 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. 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 allegedly committed an IPV.

2. The OIG has requested that Respondent be disqualified from receiving FAP program benefits.
3. Respondent was a recipient of FAP and MA benefits issued by the Department.
4. Respondent was aware of the responsibility to report income.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period concerning the FAP program (FAP fraud period) is [REDACTED].
7. During the FAP fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
8. The Department alleges that Respondent received an FAP OI in the amount of \$ [REDACTED].
9. This was Respondent's first alleged FAP IPV.
10. The Department's OIG indicates that the time period it is considering the fraud period concerning the MA program (MA fraud period) is [REDACTED].
11. During the MA fraud period, the Department alleges that it paid \$ [REDACTED] for MA coverage and benefits on Respondent's behalf.
12. The Department alleges that Respondent received an MA OI in the amount of \$ [REDACTED].
13. 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), 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. .

Intentional Program Violation and Disqualification

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 (AHH) 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 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 (January 2016), p. 5.

The Department alleged an FAP OI in this case of \$█ due to unreported income. However, as discussed below, Respondent received an FAP OI totaling \$█ which is under the \$█ threshold for IPV. Although the Department alleged that Respondent received an MA OI totaling \$█ as discussed below, the Department's evidence is insufficient to establish an MA OI. Because the FAP OI and MA OI combined do not total over \$█ the Department has failed to establish that the allegations against Respondent satisfy the threshold to pursue an IPV. Accordingly, there is no basis for the Department's request to disqualify Respondent from receipt of FAP benefits due to an FAP OI. BAM 720, pp. 15-16.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The Department has alleged that, due to failing to report his income, Respondent received an OI of FAP and MA benefits.

FAP OI

The amount of an 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), p. 6; BAM 705 (January 2016), p. 6. In this case, the Department alleges that Respondent received FAP benefits totaling \$ [REDACTED] during the FAP fraud period but was eligible for only \$ [REDACTED] in FAP benefits during this period once his income was budgeted.

To establish the OI amount, the Department presented FAP OI budgets for each month between [REDACTED] showing the FAP benefits Respondent was eligible to receive if his income had been included in the calculation of his FAP eligibility for each month. In budgeting employment income, the Department has to take into consideration the 10-day reporting period from receipt of the first paycheck from each employer, the 10-day processing period and the 12-day negative action period when determining the month to begin budgeting the earned income from each employer. BAM 105, p. 7; BAM 720, p. 7.

In this case, Respondent received his first paycheck from [REDACTED] on [REDACTED], (Exhibit A, p. 51) and his first paycheck from [REDACTED] Plastics on December 27, 2013 (Exhibit A, p. 53). As such, the Department should begin budgeting employment income from [REDACTED] in the [REDACTED] FAP budget and employment income from [REDACTED] in the [REDACTED] budget. However, the FAP OI budgets for [REDACTED] show that the Department considered Respondent's income from [REDACTED] in calculating Respondent's FAP OI for those months. Because income from [REDACTED] would not be included in calculation of Respondent's FAP budget until [REDACTED], the Department failed to satisfy its burden of showing that it properly calculated the FAP OI for [REDACTED].

With respect to the [REDACTED] FAP OI budget, a review of the budget shows that the Department properly considered Respondent's actual income from [REDACTED] BAM 720, p. 10. Because Respondent did not timely report his income, the earned income deduction was not available in calculating FAP eligibility. BAM 720, p. 10. When Respondent's income from [REDACTED] for [REDACTED] is included in the calculation of his FAP budget, Respondent was eligible for \$ [REDACTED] in FAP benefits in [REDACTED]. RFT 260 (November 2013), p. 7. The Department's benefit issuance summary shows that Respondent was issued \$ [REDACTED] in [REDACTED] (Exhibit A, p. 65). Therefore, Respondent was overissued \$ [REDACTED] in FAP benefits (the difference in the [REDACTED] he received and the \$ [REDACTED] he was eligible to receive) for [REDACTED]. Therefore, the Department is entitled to recoup/collect \$ [REDACTED] for the FAP OI.

MA OI

The Department also sought to recoup an MA overissuance. 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 2016), 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. Because Respondent failed to timely report income, the error resulting in overissued MA benefits in this case was a client error. Therefore, the Department may seek to recoup the MA overissuance.

The amount of an MA OI for an OI due to unreported income, the OI amount is the lesser of (i) the correct deductible amount (minus any amount already met) if there would have been deductible or a larger deductible or (ii) the amount of MA payments. BAM 710, pp. 1-2. The minimum OI amount for an OIG referral is \$ [REDACTED] BEM 710, p. 2.

In this case, the Department testified that during the MA fraud period, Respondent received MA under the Adult Medical Program (AMP). Because there was no deductible and no evidence that Respondent was eligible for MA under a deductible program, the MA OI is limited to amounts of MA payments made by the Department that Respondent was ineligible to receive.

In order to be financially eligible for AMP during the MA fraud period, Respondent could not have net income in excess of \$ [REDACTED] BEM 640 (July 2013), p. 4; RFT 236 (December 2013), p. 1. Net income for AMP purposes is determined by deducting \$ [REDACTED] from a program group member's gross earnings and then deducting an additional 20% of the person's remaining gross earnings. BEM 640, p. 5. Additionally, the amount of court-ordered support paid by the program group members in the month being tested is deducted from the program group's remaining income. BEM 640, p. 5.

In this case, in establishing the MA OI, the Department alleged that Respondent's monthly income exceeded the \$ [REDACTED] AMP monthly income limit. However, the Department did not present any budgets showing the calculation of Respondent's *net* income after taking into consideration the earned income and child support deductions and establishing that his net income exceeded the AMP income limit. In the absence of such evidence, the Department has failed to establish the MA OI. Accordingly, the Department is not entitled to recoup/collect the alleged MA OI.

Thus, the Department is entitled to recoup and/or collect from Respondent \$ [REDACTED] in over issued FAP benefits between [REDACTED], and [REDACTED], and no over issued MA benefits 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, if any, concludes that:

1. Because the IPV \$ [REDACTED] threshold has not been established, the Department **has not** established that Respondent committed an FAP IPV and is subject to an FAP disqualification.
2. Respondent **did** receive an FAP OI in the reduced amount of \$ [REDACTED]
3. Respondent **did not** receive an MA OI.

The Department is ORDERED to (i) reduce the FAP OI to \$ [REDACTED] and to initiate recoupment/collection procedures for the reduced amount in accordance with Department policy, less any amounts already recouped/collected and (ii) delete the MA OI and cease any recoupment/collections procedures for the MA OI.



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

DHHS

[REDACTED]

Respondent

[REDACTED]

Via Email

[REDACTED]