



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: December 14, 2016
MAHS Docket No.: 16-011001
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on November 15, 2016, from Lansing, Michigan. The Department was represented by Regulation Agent [REDACTED], of the Office of Inspector General (OIG). Respondent did not appear at the hearing. The Notice of Disqualification Hearing (MAHS-827) sent to Respondent was not returned as undeliverable. In accordance with 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5), and Bridges Administration Manual (BAM) 720 the hearing proceeded in Respondent's absence.

ISSUES

Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?

Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1. On September 17, 2013, Respondent began receiving Food Assistance Program (FAP) benefits through Michigan. Respondent was issued his monthly Food Assistance Program (FAP) benefits on the 11th of each month. Respondent was

issued Food Assistance Program (FAP) benefits through Michigan up to and including May 11, 2014.

2. On November 17, 2013 Respondent began using Michigan Food Assistance Program (FAP) benefits in Mississippi. Respondent continued to use Michigan Food Assistance Program (FAP) benefits outside Michigan until June 15, 2014.
3. On May 12, 2013, the Department's OIG filed a disqualification hearing request.
4. The Department has not met its evidentiary burden to establish that Respondent committed an Intentional Program Violation.
5. The Department has failed to establish that Respondent received a Food Assistance Program (FAP) over-issuance in accordance with Department policy.

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 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 .3011.

Bridges Administration Manual (BAM) 720 Intentional Program Violation (10-1-2015) governs the Department's actions in this case. OIG requests IPV hearing for cases involving:

1. FAP trafficking over-issuances that are not forwarded to the prosecutor.
2. 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.

INTENTIONAL PROGRAM VIOLATION

BAM 720 states that a 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.

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. In other words, the Department must show that the Respondent engaged in a fraudulent act or omission which they knew would result in receiving assistance s/he was not eligible for.

In this case, the Department has presented no evidence addressing whether Respondent was clearly and correctly instructed regarding his or her reporting responsibilities. Establishing this alleged Intentional Program Violation requires evidence which shows that Respondent was aware that he was required to report his change of physical residence to another state. Absence of evidence on this required element means that the Department has not met its burden of going forward with evidence to support their proposed action. The Department has not established an Intentional Program Violation.

OVER-ISSUANCE

Over-issuance Period

BAM 720 states that the over-issuance period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy **or** 72 months (6 years) before the date it was referred to the RS, whichever is later.

To determine the first month of the over-issuance period (for over-issuances 11/97 or later) Bridges allows time for:

The client reporting period, per BAM 105.

The full standard of promptness (SOP) for change processing, per BAM 220.

The full negative action suspense period.

The over-issuance period ends the month (or pay period for CDC) before the benefit is corrected.

In this case, the Department submitted evidence showing that Respondent began using Michigan Food Assistance Program benefits outside Michigan beginning November 17, 2013. Food Assistance Program (FAP) recipients are not eligible for Food Assistance Program (FAP) benefits through Michigan if they are not a physical resident of Michigan. Even though no Intentional Program Violation has been established, the evidence in this record indicates that Respondent did receive an over-issuance of Food Assistance Program (FAP) benefits.

In order to comply with Department policy, the first step in determining an over-issuance is to determine what caused the over-issuance. Department policy provides guidance for three types of over-issuances, Bridges Administration Manual (BAM) 705 Agency Error Over-Issuances, Bridges Administration Manual (BAM) 715 Client/CDC Provider Error Over-Issuances and Bridges Administration Manual (BAM) 720 Intentional Program Violations. The Department has failed to meet its evidentiary burden of establishing an Intentional Program Violations so BAM 720 is not relevant to the analysis.

Bridges Administration Manual (BAM) 715 Client/CDC Provider Error Over-Issuances (1-1-2016) provides:

DEPARTMENT POLICY

All Programs

Recoupment policies and procedures vary by program and over-issuance type. This item explains client error over-issuance processing and establishment.

BAM 700 explains over-issuance discovery, types and standard of promptness. BAM 705 explains agency error and BAM 720 explains Intentional Program Violations (IPV).

Definitions

All Programs

A provider error over-issuance is when the client received more benefits than he/she was entitled to because the client/CDC provider gave incorrect or incomplete information to the department.

A client error exists when the client's timely request for a hearing results in the suspension of a Michigan Department of Health and Human Services (MDHHS) action, and any of:

The hearing decision upholds the MDHHS action.

The client withdraws the hearing request.

The client fails to appear for the hearing which is not rescheduled.

The Michigan Administrative Hearings System (MAHS) sends written notice to proceed with case actions.

The essence of this over-issuance is that Respondent did not report his change of physical residence to another state and was no longer eligible for Food Assistance Program (FAP) benefits through Michigan because he was no longer a physical resident of Michigan. However, the same evidentiary failure in establishing an Intentional Program Violation is applicable in determining if the over-issuance is a Client/CDC Provider over-issuance. If the evidence in this record does not established that Respondent was clearly and correctly instructed regarding his or her reporting responsibilities, his failure to report the change of physical residence cannot be classified as giving incorrect or incomplete information to the Department. The over-issuance in this case is not a Client/CDC Provider over-issuance.

Bridges Administration Manual (BAM) 705 Agency Error Over-Issuances (1-1-2016) provides:

DEPARTMENT POLICY

All Programs

Recoupment policies and procedures vary by program and over-issuance type. This item explains agency error processing and establishment.

BAM 700 explains over-issuance discovery, types and standards of promptness. BAM 715 explains client error, and BAM 720 explains intentional program violations.

Definition

All Programs

An **agency error** is caused by incorrect actions (including delayed or no action) by the Michigan Department of Health and Human Services (MDHHS) staff or department processes. Some examples are:

Available information was not used or was used incorrectly.

Policy was misapplied.

Action by local or central office staff was delayed.

Computer errors occurred.

Information was not shared between department divisions such as services staff.

Data exchange reports were not acted upon timely (Wage Match, New Hires, BENDEX, etc.).

If unable to identify the type of over-issuance, record it as an agency error.

This over-issuance does not fit any of the specifically identified situations provided. However, it can be classified as an Agency Error over-issuance using the catch all provision. In accordance with Department policy, the over-issuance in this case is classified as Agency Error. BAM 705 further provides:

OVERISSUANCE PERIOD

All Programs

Begin Date

FIP, SDA, CDC and FAP

The over-issuance period begins the first month (or first pay period for CDC) when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the over-issuance was referred to the RS, whichever 12 month period is later.

Example: An agency error was referred to the RS in May 2014 for the period of March 2011 through June 2012. The begin date would be July 2011. The period would be July 2011 through June 2012 since this is the latest 12-month period.

To determine the first month of the over-issuance period for changes reported timely and not acted on, Bridges allows time for:

The full standard of promptness (SOP) for change processing, per BAM 220.

The full negative action suspense period; see BAM 220, EFFECTIVE DATE OF CHANGE.

End Date

The over-issuance period ends the month (or pay period for CDC) before the benefit is corrected.

Discovery Date

FIP, SDA, CDC and FAP

Bridges automatically inserts the date when there is an over-issuance and a referral is made to the RS. The RS determines the discovery date for manual claims and it is the date that the over-issuance is known to exist and there is evidence available to determine the type.

Determining the proper over-issuance period requires determining when the over-issuance was referred to a Recoupment Specialist. The evidence in this record does not indicate that an over-issuance referral was ever made to a Recoupment Specialist. The Investigation Report (Department's Exhibit A page 3) indicates that an investigation resulted from an out of state locator match but does not state when the match occurred. The earliest evidence developed from the investigation was on September 23, 2015. The policy cited above restricts the over-issuance period of an Agency Error over-issuance to a 12 month period before the over-issuance was referred. The only date provided by the evidence in this case is September 23, 2015, the date of the earliest evidence developed from the investigation. Applying the over-issuance period calculation criteria cited above, September 2014 is the earliest a proper over-issuance period could start. The over-issuance period alleged by the Department in this case is December 1, 2013 to May 31, 2014. The Department has failed to establish that Respondent received a Food Assistance Program (FAP) over-issuance in accordance with Department policy.


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, finds that the Department has NOT established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV).

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department has failed to establish that Respondent received a Food Assistance Program (FAP) over-issuance in accordance with Department policy.

It is ORDERED that the actions of the Department of Health and Human Services, in this matter, are REVERSED.

GH/nr



Gary Heisler
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

Petitioner

[Redacted]

DHHS

[Redacted]

Respondent

[Redacted]