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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



Date Mailed: October 11, 2016
MAHS Docket No.: 16-009049
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and Medical Assistance (MA) benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving benefits for 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 [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 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 changes in residence.
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 FAP fraud period is [REDACTED], (FAP fraud period).
7. The Department's OIG indicates that the time period it is considering the MA OI period is [REDACTED], (MA OI period).
8. During the fraud period, Respondent was issued \$ [REDACTED] in FAP and MA benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FAP and MA benefits in the amount of \$ [REDACTED].
10. This was Respondent's first alleged IPV.
11. A notice of hearing was mailed to Respondent at the last known address and was not returned by the U.S. 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. .

Effective January 1, 2016, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the 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), pp. 12-13; 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 (January 2016), 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.

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 of her FAP benefits because she failed to establish Michigan residency and failed to notify the Department that she moved back to [REDACTED] but continued to receive and use Michigan-issued FAP benefits while out-of- state, which resulted in total ineligibility for benefits.

To be eligible, a person must be a Michigan resident. BEM 220 (July 2014), p. 1. For FAP cases, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. BEM 220, p. 1. Eligible persons may include persons who entered the state with a job commitment or to seek employment; and students (for FAP only, this includes students living at home during a school break). BEM 220, p. 1. For FAP cases, a person who is temporarily absent from the group is considered living with the group. BEM 212 (July 2014 and October 2015), p. 3. However, a person's absence is not temporary if it has lasted more than thirty days. BEM 212, p. 3.

First, the Department presented Respondent's online application dated [REDACTED], to show that she acknowledged her responsibility to report changes as required. Exhibit A, pp. 11-22. Respondent included her out-of-state driver's license from [REDACTED] with the application.

Second, the Department presented Respondent's FAP transaction history. Exhibit A, pp. 29-32. The FAP transaction history showed that from [REDACTED], to [REDACTED], Respondent used FAP benefits issued by the State of Michigan out-of-state in [REDACTED] Exhibit A, pp. 30-32.

Third, the Department presented Respondent's LexisNexis profile to show that she resided out-of-state in [REDACTED] during the alleged fraud period. Exhibit A, pp. 33-35.

Fourth, the Department presented an out-of-state verification to show that Respondent was approved for MA benefits in [REDACTED] on [REDACTED], and began receiving medical services and prescriptions out-of-state starting [REDACTED]. Exhibit A, pp. 4 and 36-42.

Fifth, the OIG agent testified that she spoke to Respondent's grandmother on [REDACTED], who reported to the OIG agent that Respondent moved back to [REDACTED] in [REDACTED].

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of FAP benefits. There was no evidence to show that Respondent, during the alleged fraud period, purposely failed to establish Michigan residency and/or purposely failed to report a change in residency in order to continue receiving FAP benefits from Michigan. The Department did not present evidence to establish Respondent's intent during the alleged IPV usage, other than the FAP transaction history/LexisNexis profile/out-of-state verification. However, this failed to show by clear and convincing evidence that Respondent intentionally withheld information during the alleged fraud period for the purpose of maintaining Michigan FAP eligibility. In summary, in the absence of any clear and convincing evidence that Respondent intentionally withheld her residency information and/or her out-of-state move, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15; BEM 708 (April 2014), p. 1. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, 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. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

FAP Overissuance

As stated previously, there was no IPV committed. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/provider error overissuance 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. BAM 715 (January 2016), p. 1.

In this case, the Department argued two points: (i) Respondent failed to establish Michigan residency; and (ii) she failed to report her move back to [REDACTED] Exhibit A, p. 1. Thus, the Department argues that Respondent was ineligible for FAP and MA benefits from the time the benefits were issued after she submitted her application dated [REDACTED]. However, the undersigned disagrees. Respondent conducted FAP transactions in the State of Michigan from [REDACTED]; thus, this evidence is persuasive to conclude that she was a resident of Michigan during the period in which she used her benefits in Michigan. Exhibit A, pp. 29-30. Nevertheless, because she began using her Michigan issued FAP benefits out-of-state in [REDACTED] on [REDACTED], this is the date her out-of-state residency began. Therefore, turning back to the two points the Department argued above, Respondent did establish Michigan residency from [REDACTED], but failed to report her move back to [REDACTED] on or about [REDACTED]. The undersigned finds that the Department failed to support its first argument of her alleged failure to establish Michigan residency, but did provide supporting evidence for its second argument, Respondent's failure to report to an out-of-state move. Therefore, a client error is present in this situation because Respondent failed to notify the Department of her change in residency. See BAM 715, p. 1.

Applying the OI begin date policy, the Department determined that the OI period began on [REDACTED]. See Exhibit A, pp. 4 and 30. It is found that the Department applied the inappropriate OI begin date because Respondent did not begin her out-of-state usage until [REDACTED]. Exhibit A, p. 30. As such, the undersigned finds that the appropriate OI begin date is [REDACTED]. See BAM 715, pp. 4-5.

Additionally, 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 OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 715, p. 6.

In establishing the OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued FAP benefits by the State of Michigan from [REDACTED], which totaled \$ [REDACTED] Exhibit A, p. 24. Thus, the Department is entitled to recoup \$ [REDACTED] of FAP benefits it issued to Respondent from [REDACTED].

MA Overissuance

The Department initiates MA recoupment of an overissuance (OI) due to client error or intentional program violation (IPV), not when due to agency error. BAM 710 (October 2015), p. 1. When the Department receives the amount of MA payments, it determines the OI amount. BAM 710, p. 1. For an OI due to unreported income or a change affecting need allowances:

- If there would have been a deductible or larger deductible, the OI amount is the correct deductible (minus any amount already met) or the amount of MA payments, whichever is less.
- If there would have been a larger LTC, hospital or post-eligibility patient-pay amount, the OI amount is the difference between the correct and incorrect patient-pay amounts or the amount of MA payments, whichever is less.

BAM 710, p. 2. For an OI due to any other reason, the OI amount is the amount of MA payments. BAM 710, p. 2.

In this case, the Department also alleges that an OI was present for Respondent's MA benefits. As stated above, the evidence established that Respondent failed to notify the Department that she no longer resided in Michigan but her MA benefits continued to pay her health premiums/capitations while she was out-of-state. As such, a MA OI is also present in this case because Respondent was not eligible to receive MA benefits in Michigan as she had established residency in [REDACTED] during the OI period. See BAM 710, p. 1; BEM 211 (January 2015), p. 3; and BEM 220 (July 2014), pp. 1-2.

In establishing the OI, BAM 710 states that for an OI due to any other reason, the OI amount is the amount of MA payments. See BAM 710, p. 2. The Department presented a summary of the MA capitations paid on Respondent's behalf from [REDACTED] (Exhibit A, pp. 25-28); however, as shown above, the undersigned concluded the OI period began [REDACTED]. Moreover, the Department presented an out-of-state verification to show that Respondent was approved for MA benefits in [REDACTED] on [REDACTED], and began receiving medical services and prescriptions out-of-state starting [REDACTED] Exhibit A, pp. 4 and 36-42. Because she began receiving medical services for her out-of-state MA benefits on [REDACTED], and the fact the FAP out-of-state usage began on [REDACTED], the undersigned concludes that OI begin date is [REDACTED]. See BAM 710, p. 1 (For changes unreported by ongoing recipients, the OI period begins the first day of the month after the month in which the standard reporting period plus the negative action period would have ended). Thus, the Department is entitled to recoup \$ [REDACTED] of MA benefits it issued to Respondent for [REDACTED]. Exhibit A, p. 27.

In summary, the total OI amount the Department is entitled to recoup is \$ [REDACTED] of FAP and MA benefits for the period of [REDACTED] (\$ [REDACTED] FAP OI amount plus \$ [REDACTED] MA OI amount).

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** receive an OI of FAP and MA program benefits in the amount of \$ [REDACTED]

The Department is **ORDERED** to reduce the OI to \$ [REDACTED] for the period [REDACTED], and initiate recoupment/collection procedures in accordance with Department policy, less any amount already recouped and/or collected.

EJF/jaf



Eric J. Feldman

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]

Via email

[REDACTED]