



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: January 23, 2017
MAHS Docket No.: 16-011306
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 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on December 20, 2016, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent 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.

ISSUE

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Did Respondent receive a [REDACTED] over-issuance of Family Independence Program (FIP) benefits between October 1, 2012 and November 30, 2012, 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 June 4, 2012, Respondent electronically signed the affidavit in the Assistance Application (DHS-1171) certifying notice of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.
2. Respondent had no apparent physical or mental impairment that would limit her understanding or ability to provide true and accurate information or fulfill the reporting requirement.
3. On August 6, 2012, Respondent was participating in employment related requirements through the Michigan Works Agency. Respondent began employment through [REDACTED]. Department Exhibit A pages 26-29. Respondent continued the employment through September 2014. Department Exhibit A pages 30-34.
4. On October 8, 2012, the Department received verification of Respondent's employment through [REDACTED]. Department Exhibit A pages 26-29.
5. Respondent received Family Independence Program (FIP) benefits from June 16, 2012 through December 31, 2012. Department Exhibit A pages 35 & 36.
6. The Department failed to meet its evidentiary burden of submitting clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV).
7. The Department failed to meet its evidentiary burden of submitting evidence that Respondent received a Family Independence Program (FIP) over-issuance.

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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 they knew would result in receiving assistance they were not eligible for.

In this case, the Department presented a June 4, 2012 Assistance Application (DHS-1171) that Respondent submitted to the Department prior to the alleged over-issuance period. This documentation is sufficient to establish that Respondent certified knowledge of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences. The Department alleges that Respondent committed an Intentional Program Violation (IPV) by not reporting her August 6, 2012 employment start until October 8, 2012.

The evidence in this record also shows that Respondent was participating in the Michigan Works Agency program as an eligibility requirement for receipt of Family

Independence Program (FIP) benefits. The Verification of Employment form at pages 26 & 27 shows it is MWA Version 2.0. During this hearing the Department representative was asked if any records were available from the Michigan Works Agency to show whether Respondent reported starting employment to them, and if so when. No evidence regarding Respondent's interaction with the MWA is in this record.

Establishment of an Intentional Program Violation (IPV) requires submission of clear and convincing evidence regarding all aspects of the allegation. Anyone who understands the requirement of participation in employment related activities as an eligibility factor for Family Independence Program (FIP) benefits, knows that a FIP recipient must successfully meet and verify their employment related requirements through MWA. Failure to provide clear and convincing evidence on Respondent's status with MWA, is a failure of meeting the evidentiary burden to establish an Intentional Program Violation (IPV).

OVER-ISSUANCE

The evidence in this record regarding Respondent's earned income during October and November 2012 suggest that there might have been a Family Independence Program (FIP) over-issuance. In order to comply with Department policy, the first step in establishing an over-issuance is determining what caused the over-issuance. The Department has not submitted evidence sufficient to establish that the over-issuance was caused by an Intentional Program Violation (IPV) so the criterion for determining an over-issuance period and amount in Bridges Administration Manual (BAM) 720 Intentional Program Violation are not applicable.

Bridges Administration Manual (BAM) 715 Client/CDC Provider Error Over-Issuance (1-1-2013) 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 intent of the policy is to create a class of over-issuances caused when the Department is given "incorrect or incomplete information." The evidentiary deficiency of this record that prevents determining an IPV, also prevents determining what actually caused the possible over-issuance. The evidence in this record is insufficient to determine that the possible over-issuance was caused by client error. Therefore, the criterion for determining an over-issuance period and amount in Bridges Administration Manual (BAM) 715 Client/CDC Provider Error Over-Issuance are not applicable.

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.

While the evidentiary deficiency in this record prevents a determination of what caused Respondent to receive an over-issuance, BAM 705 contains the catch all clause cited above. Therefore, the criterion for determining an over-issuance period and amount, shall be in accordance with BAM 705.

Over-issuance Period

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

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.

In this case, the Department did not submit evidence showing a referral to a Recoupment Specialist. The evidence submitted does show that the evidence regarding Respondent's employment during the time period at issue, was printed on February 5, 2015. (Department's Exhibit A pages 30-34) In the absence of evidence showing the specific date this potential over-issuance was referred to a Recoupment Specialist, the date of investigation will be used.

The 12 month period before the investigation/referral, only goes back to February 2014. The Department seeks to establish an over-issuance period which starts October 1, 2012. The Department has not complied with their own policy regarding the determination of an Agency Error over-issuance period.

DECISION AND ORDER

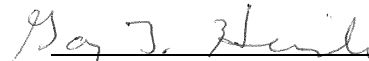
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law finds that the Department **HAS NOT** established that Respondent committed an Intentional Program Violation (IPV).

Based upon the above Findings of Fact and Conclusions of Law, the Administrative Law Judge finds that the Department **HAS NOT** established that Respondent received an over-issuance of Family Independence Program (FIP) benefits.

It is **ORDERED** that the actions of the Department of Health and Human Services, with regard to the alleged Intentional Program Violation (IPV) are **REVERSED**. The Department shall not impose any disqualification on Respondent.

It is **ORDERED** that the actions of the Department of Health and Human Services, with regard to the alleged over-issuance are **REVERSED**. The Department shall take no action to recoup any Family Independence Program (FIP) benefits issued in October and November 2012

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

DHHS

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]