



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: February 1, 2017
MAHS Docket No.: 16-010833
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 January 5, 2017, from Detroit, Michigan. The Department was represented by [REDACTED] 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), Family Independence Program (FIP), 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 and FIP?

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 May 2, 2016, 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, FIP, and MA benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in household composition and 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 is February 1, 2013 to July 31, 2014 (fraud period).
7. During the fraud period, Respondent was issued [REDACTED] in FAP, FIP, and MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP, FIP, and MA benefits in the amount of [REDACTED]
9. This was Respondent's first alleged IPV.
10. 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 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.

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 and FIP benefits because she failed to report that her fiancée, Jerome Cade, who they have a child in common, was a member of the household as well as that she had earned income, which caused an overissuance of FAP and FIP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (November 2012), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7.

Income reporting requirements are limited to the following:

- Earned income:
 - Starting or stopping employment.
 - Changing employers.
 - Change in rate of pay.
 - Change in work hours of more than five hours per week that is expected to continue for more than one month.

BAM 105, p. 7.

Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 9. These include, but are not limited to, changes in persons in the home. BAM 105, p. 9.

Additionally, parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212 (November 2012), p. 1.

First, the Department presented Respondent's online application dated June 2, 2010, to show that the Respondent was aware of her responsibility to report changes as required. Exhibit A, pp. 12-37.

Second, the Department presented Respondent's online application dated September 3, 2013, which was submitted during the alleged fraud period. Exhibit A, pp. 38-72. In the application, Respondent did not report [REDACTED] as a member of her household or any earned income, even though the Department argued that [REDACTED] was a member of the household and that she had income at the time. Exhibit A, pp. 40-44 and 47-48.

Third, the Department presented Respondent's Wage History that showed she received income from the 1st quarter of 2013 (January to March) through 3rd quarter of 2014 (July to September), which have been during the alleged fraud period. Exhibit A, p. 73.

Fourth, the Department presented Respondent's and [REDACTED] Case Comments – Summary (case comments), which documented the following from a telephone interview conducted with [REDACTED] on July 1, 2014: (i) he stated his household size is four, himself, his wife (Respondent), his step daughter, and his son; (ii) there had been no income in the household since February 2014; (iii) his wife just started a new job position recently (he did not know much detail of his wife's employment); and (iv) he has been in the household with a best date of January 2013. Exhibit A, pp 74-75.

Fifth, the Department presented a signed affidavit from Respondent dated April 27, 2016, in which she wrote the following: (i) in 2009, her daughter was born; (ii) [REDACTED] was in and out of the home when [REDACTED] was out of the home; (iii) she let her caseworker know; (iv) she also let her caseworker know upon him returning to the home; (v) they were not married until [REDACTED]; and (vi) they have been living together consistently since the end of 2014. Exhibit A, p. 91.

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 and FIP benefits.

First, the evidence presented that [REDACTED] did not report he was a member of the household until a telephone interview held on July 1, 2014. Exhibit A, pp. 74-75. [REDACTED] reported that he had been a member of Respondent's household since on or about January 2013. Exhibit A, pp. 74-75. The evidence is persuasive that

Respondent/██████████ did not report he was a member of the household timely. See BAM 105, p. 9 and BEM 212, p. 1. Nevertheless, this evidence shows that Respondent and/or the group did not intentionally withhold or misrepresent her group composition as it was eventually reported to the Department. Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented the group composition information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP and FIP program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of FAP and FIP benefits.

Second, there was no evidence to show that Respondent, during the alleged fraud period, represented that she intentionally withheld her employment earnings from the Department. The Department did present Respondent's online application dated September 3, 2013, which was submitted during the alleged fraud period. Exhibit A, pp. 38-72. In the application, Respondent did not report any employment earnings, even though the Department argued that her Wage History showed she had earnings during the quarter in which the application was submitted, which was 3rd quarter of 2013 (July to September). Exhibit A, pp. 47 and 73. However, the problem with the Department's argument is that the Wage History fails to show monthly earnings. It is quite possible that Respondent did not have any earnings in September 2013 when she submitted the application. The Department failed to provide any other evidence showing if in fact she had earnings in September 2013 and that she misrepresented her income when the application was submitted. Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented her income information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP and FIP program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of FAP and FIP 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 and FIP benefits. Therefore, Respondent is not subject to a disqualification under the FAP and FIP programs. BAM 720, p. 16.

FAP and FIP Overissuances

As stated previously, the Department failed to show that Respondent purposely failed to report income and her group composition. Thus, no IPV was committed. But, 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.

However, there is no FIP or FAP client error present in this case because the Department failed to establish an OI amount for FIP or FAP benefits. In this case, the Department alleges that Respondent received an OI of FAP benefits totaling [REDACTED] and an OI of FIP benefits totaling [REDACTED]. Exhibit A, p. 3. When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance (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. However, the Department did not present any OI budgets showing how the OI was calculated. The Department only presented Respondent's Eligibility Summary showing her FAP and FIP issuance history. See Exhibit A, pp. 76-77. But, this evidence alone, fails to establish how the Department calculated an OI of FAP and FIP benefits. The Department failed to present the actual OI budgets for the evidence record in order to show how the OI was calculated. Accordingly, the Department did not satisfy its burden of showing that Respondent received an OI of FAP and FIP benefits. See BAM 715, p. 8.

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 and her group member's MA benefits. However, the Department's evidence packet failed to specify what the MA was based on, i.e., excess income. As such, the undersigned Administrative Law Judge (ALJ) attempted to obtain clarification from the OIG agent why she was pursuing an OI of MA benefits. Based on the OIG agent's testimony, an OI of MA benefits occurred for her and/or the group member's due to her failure to report her income and failure to report the group member. However, the Department would need to present the undersigned ALJ MA budgets showing how the unreported income/group composition resulted in an OI of MA benefits, but the Department failed to do so. The Department only presented the MA capitations paid on behalf of Respondent and her group member's for the evidence record. Exhibit A, pp. 78-86. However, this evidence alone, fails to establish how the Department calculated an OI of MA benefits.

Accordingly, the undersigned ALJ finds the Department failed to satisfy its burden of showing that Respondent and her group member's received an OI for MA benefits totaling [REDACTED]. See Exhibit A, p. 3; BEM 211 (November 2012), pp. 1-7 (MA Group Composition); BEM 500 (January 2013), pp. 1-12 (Income Overview); and BEM 530 (October 2012), pp. 1-4 (MA Income Budgeting).

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, FIP, and MA program benefits in the amount of [REDACTED].

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

EF/tm



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]
[REDACTED]
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