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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: February 15, 2017  
MAHS Docket No.: 16-013046  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Eric J. Feldman**

**HEARING DECISION FOR CONCURRENT BENEFITS  
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 Regulations, particularly 7 CFR 273.16 and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 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 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 received concurrent program benefits and, as such, 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 her residence to the Department.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. Respondent began using FAP benefits outside of the State of Michigan beginning on [REDACTED].
7. The OIG indicates that the time period they are considering the FAP fraud period is [REDACTED]; and the MA OI period is [REDACTED].
8. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP and MA benefits from the State of Michigan.
9. During the alleged fraud period, Respondent was issued FAP benefits from the State 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), 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 .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 of Health and Human Services (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:

- FAP trafficking OIs 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.

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- Intentional Program Violation
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- 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 for the period of [REDACTED] because she failed to notify the Department that she no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out of state. Also, the Department alleges that Respondent committed an IPV of her FAP for the period of [REDACTED] because she failed to update residency information for the purpose of receiving FAP benefits from more than one state.

A person cannot receive FAP in more than one state for any month. BEM 222 (July 2013), p. 3. Out-of-state benefit receipt or termination may be verified by one of the following: DHS-3782, Out-of-State Inquiry; Letter or document from other state; or Collateral contact with the state. BEM 222, p. 4.

A person is disqualified for a period of 10 years if found guilty through the administrative hearing process, convicted in court or by signing a repayment and disqualification agreement (such as a DHS-826, Request for Waiver of Disqualification Hearing, or DHS-830, Disqualification Consent Agreement,) of having made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (October 2015), p. 1.

Additionally, 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 (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 rights and responsibilities to report changes as required. Exhibit A, pp. 13-48.

Second, the Department presented Respondent's FAP transaction history. Exhibit A, pp. 49-59. The FAP transaction history showed that Respondent used FAP benefits issued by the State of Michigan out of state in [REDACTED] and [REDACTED] (majority) from [REDACTED]. Exhibit A, pp. 55-59.

Third, the Department presented evidence to show that Respondent received FAP benefits simultaneously from the States of [REDACTED] and Michigan from [REDACTED]. See Exhibit A, pp. 62-63 and 72.

Fourth, the Department also presented other documents, including Clear Reports, employment verification of Respondent's spouse, and Front-End Eligibility (FEE) Investigation Reports. Exhibit A, pp 73-92.

Based on the foregoing information and evidence, the Department has failed to establish a basis for a 10-year disqualification period for the alleged fraud period of [REDACTED]. There was no evidence to show that Respondent, during the alleged fraud period, made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203, p. 1. The Department did not present evidence to establish Respondent's intent during the alleged IPV usage. Therefore, the undersigned Administrative Law Judge (ALJ) finds that the Department failed to establish by clear and convincing evidence that Respondent made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203, p. 1.

Additionally, the Department also alleged that Respondent committed an IPV of her FAP because she failed to notify the Department that she no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out of state for the period of [REDACTED]. Again, though, the Department did not present any evidence to establish Respondent's intent during the alleged IPV usage other than out-of-state usage, Clear Reports, and other documentation. However, this evidence failed to show by clear and convincing evidence that Respondent intentionally withheld information concerning an out-of-state for the purpose of maintaining Michigan FAP eligibility.

In summary, in the absence of any clear and convincing evidence, 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 2016), p. 1. Clients are disqualified for 10 years for an 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

- 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 (January 2016), p. 6.

As stated previously, there is no IPV present in this case. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/provider error OI 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, p. 1.

A client error is present in this situation because (i) Respondent failed to report a change in residency in order to continue receiving FAP benefits from Michigan for the period of [REDACTED]; and (ii) Respondent failed to report to the Department the receipt of concurrent benefits for the period of [REDACTED]. The evidence established that (i) Respondent was no longer resided in Michigan, and she moved to [REDACTED] during the time period of [REDACTED]; and (ii) she was ineligible for FAP benefits from [REDACTED] because she received concurrent benefits. Therefore, Respondent was not eligible for FAP benefits and was over issued FAP benefits for any period she was ineligible to receive FAP benefits during these time periods. See BEM 212, p. 3; BEM 220, p. 1; and BEM 222, pp. 3-4.

Applying the OI period policy, it is found that the appropriate OI period begin date [REDACTED]. BAM 715, pp. 4-5, and Exhibit A, pp. 4 and 55.

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] [REDACTED]. Exhibit A, pp. 60-63. Thus, the Department is entitled to recoup \$ [REDACTED] of FAP benefits it issued to Respondent for [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/group member's MA benefits. The Department alleges that Respondent failed to notify the Department that she and her group members no longer resided in Michigan but their MA benefits continued to pay their MA capitations while they were out of state.

As stated previously, an FAP OI is present because Respondent failed to notify the Department of her change in residency/concurrent receipt of benefits. The evidence is persuasive that Respondent/group members were not Michigan residents and that they had established residency in [REDACTED] during the OI period. This established that Respondent/group members were not eligible for MA benefits. Therefore, an MA OI is also present in this case because Respondent failed to notify the Department of their change in residency. See BAM 710, p. 1; BEM 211 (January 2015), p. 3; and BEM 220 (July 2014), pp. 1-2.

Applying the OI period policy, the Department indicated that the OI period is [REDACTED] Exhibit A, p. 4. However, Respondent's out-of-state usage began on [REDACTED] therefore, it is found that the appropriate OI period begin date is [REDACTED] Exhibit A, pp. 4 and 55, and 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).

In establishing the OI amount, the Department presented a summary of the MA capitations paid on Respondent's/group member's behalf from [REDACTED] [REDACTED], which totaled \$ [REDACTED]. See Exhibit A, pp. 64-68. Thus, the Department is entitled to recoup \$ [REDACTED] of MA benefits it issued to Respondent/group member for [REDACTED]. See BAM 710, p. 2.

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

### 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, 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 benefits in the amount of \$ [REDACTED]

The Department is **ORDERED** to reduce the OI to \$ [REDACTED] for the FAP period [REDACTED], and for the MA period of [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]

[REDACTED]