



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: March 1, 2017
MAHS Docket No.: 16-013555
Agency No.: [REDACTED]
Petitioner: [REDACTED]
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 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 February 6, 2017, 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 July 13, 2016 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 May 10, 2014.
7. The OIG indicates that the time period they are considering the FAP fraud period is April 30, 2014 to November 30, 2015.
8. The OIG indicates that the time period they are considering the MA OI period is June 1, 2015 to November 30, 2015.
9. During the alleged fraud period, Respondent was issued [REDACTED] in FAP and MA benefits from the State of Michigan.
10. During the alleged fraud period, Respondent was issued FAP benefits from the State of Oklahoma.
11. This was Respondent's first alleged IPV.
12. 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), 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.

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 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 or DHS-830) of having made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (July 2013), p. 1.

First, the Department presented evidence that Respondent and her group members (her children) received FAP benefits simultaneously from the States of Oklahoma and Michigan from April 30, 2014 to May 31, 2014, and May 6, 2015 to November 30, 2015 (the alleged fraud period). See Exhibit A, pp. 59-70.

Second, the Department presented Respondent's online applications dated April 30, 2014 and May 6, 2015, which were submitted during the alleged fraud period. Exhibit A, pp. 11-49. By signing these applications, Respondent acknowledged her responsibility to report changes as required. Exhibit A, pp. 11-49. Moreover, in these applications, Respondent marked "no" to the question that asked if any people in her home are getting other FS benefits (undersigned interprets "FS" to mean Food Stamps),

even though the Department argued that she and/or her group members were receiving FAP benefits from the State of Oklahoma at the time. See Exhibit A, pp. 18 and 38. It should be noted that in the “Additional Information” section of the April 30, 2014 application, Respondent reported that she came to [REDACTED] from Oklahoma because her husband left her and the children. Exhibit A, p. 27.

Third, the Department presented Respondent’s FAP transaction history. Exhibit A, pp. 50-58. The FAP transaction history showed that Respondent used FAP benefits issued by the State of Michigan in Michigan, Oklahoma (majority of the time), and other states during the period of May 2014 to December 2015. See Exhibit A, pp. 50-58.

Fourth, the OIG Investigation Report indicated that Respondent did report on October 29, 2015, that she is not living in Michigan anymore and the caseworker put her case into closure based on her statement. Exhibit A, p. 4.

Based on the foregoing information and evidence, the Department has established by clear and convincing evidence that Respondent committed an IPV of FAP benefits. As stated previously, the evidence indicated that Respondent received FAP benefits simultaneously (Michigan and Oklahoma) from April 30, 2014 to May 31, 2014, and May 6, 2015 to November 30, 2015. Exhibit A, pp. 59-70. This represents approximately seven months of benefits Respondent received concurrently. Furthermore, the Department presented two of Respondent’s applications submitted during the fraud period in which she marked “no” to the question that asked if any people in her home are getting other FS benefits (undersigned interprets “FS” to mean Food Stamps), even though the evidence established that she and/or her group members were receiving FAP benefits from the State of Oklahoma at the time. See Exhibit A, pp. 18 and 38. This evidence established that Respondent made a fraudulent statement or representation regarding her residence in order to receive multiple FAP benefits simultaneously from Michigan and Oklahoma. See BEM 203, p. 1.

In summary, there was clear and convincing evidence that Respondent was aware of her responsibility to report changes in residence and that she intentionally withheld information for the purpose of maintaining Michigan FAP eligibility. Therefore, the Department has established 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 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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is 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 720, p. 8.

In the present case, the Department is entitled to recoup ████████ of FAP benefits it issued to Respondent from April 30, 2014 to May 31, 2014, and May 6, 2015 to November 30, 2015. Exhibit A, pp. 69-70.

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. The Department alleges that Respondent failed to notify the Department that she and her group member (her children) no longer resided in Michigan but the children's MA benefits continued to pay their MA capitations while they were out-of-state.

As stated previously, a 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 and her group members were not Michigan residents and that they had established residency in Oklahoma during the OI period. This established that Respondent and her group members were not eligible for MA benefits. Therefore, a 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.

In establishing the OI amount, the Department presented a summary of the MA capitations paid on Respondent's group member's behalf from June 2015 to November 2015, which totaled [REDACTED] Exhibit A, pp. 71-72. Thus, the Department is entitled to recoup [REDACTED] of MA benefits it issued to Respondent on behalf of her group member's (her children) for June 1, 2015 to November 30, 2015. See BAM 710, p. 2.

In summary, the Department is entitled to recoup [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** 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 initiate recoupment/collection procedures for the amount of [REDACTED] in accordance with Department policy, less any amount already recouped and/or collected.

It is **FURTHER ORDERED** that Respondent be personally disqualified from participation in the FAP program for 10 years.

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

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]

CC: [REDACTED]