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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

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 28, 2017
MAHS Docket No.: 16-016561
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). Also, [REDACTED] an intern from the OIG, was present for the hearing, but she did not provide any testimony.

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 benefits?

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], to [REDACTED].
8. The OIG indicates that the time period they are considering the MA OI period is [REDACTED], to [REDACTED].
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 [REDACTED].
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 (October 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.

As a preliminary matter, the Department amended the FAP and MA fraud/OI period to [REDACTED], to [REDACTED].

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 his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (July 2013), p. 1.

First, the Department presented Respondent's online applications [REDACTED], and [REDACTED], to show that she acknowledged her responsibility to report changes as required. Exhibit A, pp. 11-39.

Second, the Department presented Respondent's FAP transaction history. Exhibit A, pp. 51-54. The FAP transaction history showed that Respondent used FAP benefits issued by the State of Michigan out-of-state in [REDACTED] from [REDACTED], to [REDACTED]. Exhibit A, pp. 52-54.

Third, the Department presented Respondent's employment verifications, which indicated that she worked during the alleged fraud period. Exhibit A, pp. 45-50. A review of the document showed that Respondent had a [REDACTED] address. Exhibit A, p. 47.

Fourth, the Department presented credible evidence and testimony that Respondent received FAP benefits from the State of [REDACTED] from [REDACTED] to [REDACTED] and [REDACTED] to [REDACTED]. See Exhibit A, pp. 4 and 40-44. Moreover, the Department presented Respondent's Benefit Summary Inquiry, which showed that she received FAP benefits from the State of Michigan from [REDACTED] to [REDACTED]. Exhibit A, p. 56. As such, the evidence established that Respondent received benefits from the States of Michigan and [REDACTED] concurrently from [REDACTED] to [REDACTED]. Exhibit A, pp. 4, 40-44, and 56.

Fifth, the OIG Investigation Report indicated that the agent spoke with Respondent by telephone on [REDACTED], in which the following was documented: (i) she denied any knowledge of fraudulent activity related to benefits received in Michigan; (ii) she advised she obtained legal residency in [REDACTED] in [REDACTED] and previously been staying there to train for a new job since approximately [REDACTED]; (iii) she confirmed her employment in [REDACTED] beginning [REDACTED]; (iv) she confirmed her address in [REDACTED] as shown in the employment verification (Exhibit A, p. 47); (v) she denied receiving FAP benefits from the State of [REDACTED] during the period of [REDACTED] to [REDACTED]; and (vi) she denied using Michigan-issued FAP benefits in [REDACTED]. Exhibit A, pp. 4-5.

Based on the foregoing information and evidence, the Department has established by clear and convincing evidence that Respondent committed an IPV of FAP benefits.

First, on [REDACTED], Respondent argued to the OIG agent that she denied any fraudulent activity, that she received FAP benefits from [REDACTED] and that she used her Michigan-issued benefits out-of-state in [REDACTED]. However, the undersigned disagrees with Respondent's arguments. The Department presented credible evidence rebutting Respondent's claims that she had made to the OIG agent on [REDACTED]. For example, the Department presented evidence showing that Respondent received FAP benefits out-of-state from [REDACTED] and that she used her Michigan-issued FAP benefits in [REDACTED] during the fraud period. Exhibit A, pp. 4, 40-44, 52-54, and 56. This evidence disproves Respondent's arguments and therefore, the undersigned does not find her arguments credible.

Second, the undersigned finds that the Department has established that Respondent committed an IPV of FAP benefits. As stated previously, the evidence indicated that Respondent received FAP benefits simultaneously (Michigan and [REDACTED] [REDACTED] to [REDACTED]). Exhibit A, pp. 4, 40-44, and 56. This represents approximately five months of benefits Respondent received concurrently. Moreover, the Department presented evidence that Respondent was employed during the fraud period and the employment verification indicated that she had a [REDACTED] address. Exhibit A, pp. 45-50. Finally, the evidence presented that Respondent used FAP benefits issued

by Michigan in the State of ██████ during the fraud period. Exhibit A, pp. 52-54. As such, 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 ██████. See BEM 203, p. 1.

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 (October 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 satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is subject to a 10-year 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 ██████, to ██████. Exhibit A, p. 56.

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 2016), 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 any other reason other than unreported income or a change affecting need allowances, 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 no longer resided in Michigan but her MA benefits continued to pay her MA capitations while she was 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 was not a Michigan resident and that she had established residency in [REDACTED] during the OI period. Therefore, this established that Respondent was not eligible for MA benefits and an OI is present in this case due to her change in residency. See BAM 710, p. 1; BEM 211 (July 2013), pp. 3-4; and BEM 220 (July 2013), pp. 1-2.

In establishing the OI amount, the Department presented a summary of the MA capitations paid on Respondent's behalf from [REDACTED] to [REDACTED], which totaled \$ [REDACTED] Exhibit A, p. 55. Thus, the Department is entitled to recoup \$ [REDACTED] of MA benefits it issued to Respondent for [REDACTED] [REDACTED], to [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** 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.

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

Petitioner

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

Respondent

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

DHHS

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