



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: June 6, 2017
MAHS Docket No.: 16-016254
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 [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 benefits for FAP and Medical Assistance (MA)?

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 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 his residence to the Department and to provide correct and accurate information to the Department regarding applications and residency.
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 [REDACTED], (FAP) (fraud period) and [REDACTED], (Medical Assistance) (fraud period).
7. During the FAP fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
8. During the alleged FAP fraud period, Respondent was issued \$ [REDACTED] benefits from the State of Michigan and was receiving FAP benefits from the State of [REDACTED] Exhibit A, pp. 31-32.
9. During the MA fraud period, Respondent was issued \$ [REDACTED] in MA benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period
10. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED] and that Respondent received an OI in MA benefits in the amount 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 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), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and 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 (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 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 (1/1/16), 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.

Food Assistance IPV

In this case, the Respondent applied for FAP in the State of Michigan on [REDACTED] at which time he answered “No” to the question whether he was receiving FAP this month?” Exhibit A, p. 22. As part of the evidence presented by the Department in support of its IPV proofs, an email from the State of [REDACTED] was presented indicating that Respondent received FAP benefits from the State of [REDACTED] also for [REDACTED]. Exhibit A, p. 31.

The Respondent’s Electronic Benefits Transfer (EBT) purchase history indicated that he used his Michigan FAP benefits in Michigan for a short period of time (9 days) and then began using his benefits exclusively in [REDACTED] thereafter, beginning [REDACTED] Exhibit A, p. 39. BEM 222 provides that a person **cannot** receive FAP in more than one state for any month. BEM 222, (October 1, 2016), p. 3. The Department, as part of its evidence, also established that at no time after [REDACTED], when the Respondent began to use his Michigan benefits out of state did he report that he had moved, or report a change of address, and did not report that he was also receiving FAP benefits from [REDACTED] at the time he applied for FAP in Michigan. The Respondent received dual assistance beginning [REDACTED].

In this case, the Department has established by clear and convincing evidence that Respondent committed an IPV through concurrent receipt of food assistance benefits from two states at the same time. In addition, the Department established that at the

time he applied for FAP benefits in Michigan, he was receiving FAP benefits from [REDACTED]. Accordingly, Respondent is subject to a 10-year disqualification from receipt of FAP benefits.

Thus, based upon the foregoing facts and evidence, it is determined that the Department did establish an IPV by clear and convincing evidence that the Respondent committed an IPV of his FAP benefits based on concurrent receipt of benefits.

Medical Assistance IPV

For an MA IPV BAM 710 provides:

Initiate recoupment of an overissuance (OI) due to **client error or intentional program violation (IPV)**, **not** when due to **agency error** (see BAM 700 for definitions). Proceed as follows:

- Determine the OI period and amount.
- Determine the OI Type (client error or suspected IPV).
- Initiate recoupment of an OI due to client error. BAM 710, (October 1, 2015) p. 1.

For MA only, BAM 720 provides:

IPV exists when the client/AR or CDC provider:

- Is found guilty by a court, **or**
- Signs a DHS-4350, IPV Repayment Agreement, **and** the prosecutor or the office of inspector general (OIG), authorizes recoupment in lieu of prosecution, **or**
- Is found responsible for the IPV by an administrative law judge conducting an IPV or debt establishment hearing. BAM 720, p. 2

In addition, during the period [REDACTED], the Respondent was a recipient of MA although he was not living in Michigan and was receiving FAP benefits from the State of [REDACTED]. A report was presented which demonstrated that throughout the period the Respondent was receiving MA, he maintained an address in [REDACTED] and was thus, not entitled to receive MA from Michigan. Exhibit A, pp. 31-32. As regards the MA, the evidence established that at the time of the application, the Respondent had established an address in [REDACTED] and thus, based upon this evidence could not be deemed a resident of Michigan. In order to be eligible for MA, an individual must be a resident of Michigan. BEM 220.

Medicaid

A person is a resident if **all** of the following apply:

- Is not receiving assistance from another state.
- Is living in Michigan, except for a temporary absence.
- Intends to remain in the state permanently or indefinitely.

A Michigan resident is an individual who is living in Michigan except for a temporary absence.

Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished. BEM 220, (January 2016), p. 1.

Thus, based upon the evidence presented, the Department has established by clear and convincing evidence that the Respondent committed an IPV of his MA benefits.

Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. Clients are disqualified for ten years for an FAP IPV involving concurrent receipt of benefits where the client made fraudulent statement regarding identity or residency, and, for all other IPV cases involving FAP, 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. A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has established by clear and convincing evidence that Respondent committed an IPV through concurrent receipt of food assistance benefits from two states at the same time. In addition, the Department established that at the time he applied for FAP benefits in Michigan, the Respondent was already receiving benefits from the State of ██████ and then began to receive and did received FAP benefits from both states. Accordingly, Respondent is subject to a 10-year disqualification from receipt of FAP benefits. There is no disqualification period for an individual who has been found to have committed an MA IPV.

Overissuance

FAP Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. The amount of an FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6.

In this case, the Department seeks an OI of FAP benefits in the amount of \$█████ for the period of ██████, the fraud period. Respondent was not eligible for FAP benefits issued by the State of Michigan during any period he received food assistance benefits issued by the State of ██████ BEM 222. Further, Respondent was eligible for FAP benefits from the State of Michigan only if he was residing in Michigan. BEM 220 (January 1, 2014), p. 1. The Department presented proof of receipt of Michigan FAP benefits to establish the OI amount. Exhibit A, p. 43.

Thus, the Department is entitled to recoup \$█████ in FAP benefits issued during the fraud period as the Respondent was not eligible at the time of the Michigan application.

MA Overissuance

In this case, the Department provided evidence that the Respondent was ineligible for MA for the period [REDACTED], as the Department established that the Respondent was not a resident of Michigan at the time of the application as he was receiving food assistance benefits in [REDACTED] at the time he applied for FAP and MA benefits representing that he was a Michigan resident while living in [REDACTED]. Thus, at no time was the Respondent eligible for MA during the period from the application through [REDACTED].

To establish the amount of the OI the Department also presented an accounting of all the MA premiums paid on behalf of the Respondent for the period in question which demonstrated that the OI sought by the Department was correct for the amount of \$ [REDACTED] Exhibit A, pp. 44-48.

Thus, the Department is entitled to recoup \$ [REDACTED] in MA benefits issued during the fraud period as the Respondent was not eligible at the time of the Michigan MA application.

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:

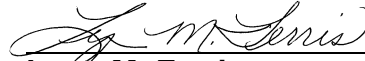
1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV of his **FAP benefits**.
2. The Department **has** established by clear and convincing evidence that Respondent committed and IPV of his **MA benefits**.
3. Respondent **did** receive an OI of FAP program benefits in the amount of \$ [REDACTED]
4. The Respondent **did** receive an OI of MA program benefits in the amount of \$ [REDACTED]

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] for the FAP OI in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from receipt of FAP benefits for a period of **10 years**.

It is FURTHER ORDERED that the Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] for MA OI in accordance with Department policy.

LMF/jaf



Lynn M. Ferris
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]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

DHHS

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