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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: July 6, 2017
MAHS Docket No.: 17-000921
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, 42 CFR 431.230(b), 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] [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?

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 residence.
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 FAP fraud period is [REDACTED], (FAP fraud period).
7. The Department's OIG indicates that the time periods it is considering the MA OI period is [REDACTED], and [REDACTED] (MA OI periods).
8. During the fraud period, Respondent was issued \$ [REDACTED] in FAP and MA benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FAP and MA benefits in the amount of \$ [REDACTED].
10. This was Respondent's second 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), 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 \$500.00 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 \$500.00 or more, or
 - the total amount is less than \$500.00, 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 (August 2016), 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 (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.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits 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.

To be eligible, a person must be a Michigan resident. BEM 220 (January 2016), 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 responsibility to report changes as required. [Exhibit A, pp. 9 and 10-34.] The undersigned also discovered during the period Respondent submitted her application, she indicated that she resided in Michigan, even though her FAP transaction history showed that she was using her Michigan issued FAP benefits out of state in [REDACTED] at the time. [Exhibit A, pp. 11 and 68.]

Second, the Department presented Respondent's online application dated [REDACTED] to show that she acknowledged her responsibility to report changes as required. [Exhibit A, pp. 9 and 35-67.] The undersigned also discovered during the period Respondent submitted her application, she indicated that she resided in Michigan, and her FAP transaction history confirmed that she was using her Michigan issued FAP benefits in Michigan at the time. [Exhibit A, pp. 37 and 70.]

Third, the Department presented Respondent's FAP transaction history. [Exhibit A, pp. 68-72.] The FAP transaction history showed that from [REDACTED] Respondent used FAP benefits issued by the State of Michigan out of state in [REDACTED]

██████████ [Exhibit A, pp. 68-69.] Then, the FAP transaction history showed that from ██████████, Respondent used FAP benefits issued by the State of Michigan in Michigan. [Exhibit A, p. 70.] Next, the FAP transaction history showed that from ██████████, Respondent used FAP benefits issued by the State of Michigan out of state in ██████████ [Exhibit A, pp. 70-72.] And finally, the FAP transaction history showed that from ██████████, Respondent used FAP benefits issued by the State of Michigan in Michigan. [Exhibit A, p. 72.]

Fourth, the Department presented Respondent's Clear Report, which showed she had registered addresses in ██████████ [Exhibit A, pp. 9 and 73-75.]

Fifth, the OIG Investigation Report indicated the following: (i) per case comments documented by the specialist on ██████████, Respondent came to the office for a State Emergency Relief (SER) issue and initially stated that she mailed her Electronic Benefits Transfer (EBT) card to someone in ██████████ and was informed that was fraud; (ii) on ██████████, she admitted she goes back and forth to ██████████ (iii) the home she reports as her address in Detroit has had no electric or water services since ██████████ (is subject to foreclosure); and (iv) she had numerous Front-End Eligibility (FEE) investigations for FAP, but she continuously applies for FAP in Michigan then leaves back to ██████████ [Exhibit A, p. 3.]

Based on the foregoing information and evidence, the Department has established by clear and convincing evidence that Respondent committed an IPV of her FAP benefits. The Department presented Respondent's online application dated ██████████, which was submitted prior to the fraud period. However, the undersigned discovered during the period Respondent submitted this application, she indicated that she resided in Michigan, even though her FAP transaction history showed that she was using her Michigan issued FAP benefits out of state in ██████████ at the time. [Exhibit A, pp. 11 and 68.] This documentation is sufficient to show by clear and convincing evidence that Respondent purposely failed to report a change in residency in order to continue receiving FAP benefits from Michigan. As such, 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 (October 2016), p. 1. Clients are disqualified for ten 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 disqualification under the FAP program. BAM 720, p. 16.

FAP Overissuance

As previously stated, the Department has established that Respondent committed an IPV of FAP benefits.

Applying the OI begin date policy and in consideration of the out-of-state uses that began on [REDACTED], the Department determined that the OI periods began on [REDACTED] [Exhibit A, pp. 3, 68, 70, and 76.] It is found that the Department applied the appropriate OI begin dates. See BAM 720, p. 7.

Additionally, 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 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], and [REDACTED], which totaled \$ [REDACTED] [Exhibit A, pp. 76-77.] Therefore, the Department is entitled to recoup \$ [REDACTED] of FAP benefits it issued to Respondent.

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 during the OI periods but her MA benefits continued to pay her health premiums/capitations while she was out of state.

For Medicaid cases, a Michigan resident is an individual who is living in Michigan except for a temporary absence. BEM 220 (January 2016), p. 2. 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, p. 2.

For Supplemental Security Income (SSI)-Related MA, Group 2 Pregnant Women, Group 2 Persons Under Age 21, Group 2 Caretaker Relative, a person's absence is temporary if for the month being tested:

- His/her location is known; and
- There is a definite plan for him to return home; and
- He/she lived with the group before the absence (Note: newborns and unborns are considered to have lived with their mothers); and
- The absence did not last, or is not expected to last, the entire month being tested unless the absence is for education, training, or active duty in the uniformed services of the U.S.

BEM 211 (January 2016), p. 6.

As shown above, BEM 211 and BEM 220 does state that 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, p. 2. However, Respondent failed to be present for the hearing to establish that she met the definition of temporary absent or that the purpose of her absence has been accomplished. Therefore, due to Respondent absence for the hearing, she failed to show how her Michigan residency could have continued during the OI periods. Instead, the Department presented persuasive evidence showing how Respondent was not a Michigan resident during the OI periods. [Exhibit A, pp. 68-75.] As such, Respondent was not eligible for MA benefits during the OI periods and, therefore, an MA OI is present. See BEM 211, pp. 6-7 and BEM 220, pp. 1-2.

In establishing the OI amount, BAM 710 states that for an OI due to any other reason, the OI amount is the amount of MA payments. See BAM 710, p. 2. The Department presented a summary of the MA capitations paid on Respondent's behalf from [REDACTED], and [REDACTED], which totaled \$ [REDACTED] [Exhibit A, pp. 78-81.] However, the Department calculated a lower OI amount for both periods totaling \$ [REDACTED] [Exhibit A, p. 4.] Nevertheless, the Department is only entitled to recoup the amount it sought, which was \$ [REDACTED] [Exhibit A, p. 4.] As such, the Department is entitled to recoup \$ [REDACTED] of MA benefits it issued to Respondent for [REDACTED], and [REDACTED].

In summary, the total OI amount the Department is entitled to recoup is \$ [REDACTED] of FAP and MA benefits ([REDACTED] FAP OI amount plus \$ [REDACTED] MA OI amount).

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.
2. Respondent **did** receive an OI of FAP and MA program 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 disqualified from FAP for a period **24 months**.

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]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

DHHS

[REDACTED]

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