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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Julie A. McMurtry
Interim Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: July 26, 2017
MAHS Docket No.: 17-004199
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Denise McNulty

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 Lansing, 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/or 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 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 allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving FAP program benefits.
3. Respondent was a recipient of FAP and MA benefits issued by the Department.
4. The Department alleged that Respondent was aware of the responsibility to report changes in address and residency.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this responsibility.
6. The Department's OIG indicates that the time period it is considering the fraud period (fraud period) is from [REDACTED] . .
7. The Department alleges that during the alleged fraud period Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan; but she was entitled to \$ [REDACTED] in such benefits during this time period.
8. The Department alleges that during the alleged fraud period Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
9. This was Respondent's first alleged FAP IPV.
10. The Department alleges that during the alleged fraud period, the Department paid \$ [REDACTED] in MA benefits on behalf of Respondent, and Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
11. The Department alleges that during the alleged fraud period Respondent received an OI in MA benefits in the amount of \$ [REDACTED]
12. A notice of hearing was mailed to Respondent at the last known address and was not returned by the U.S. Postal Service 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 (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 (May 2014), 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. 8 (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 concerning her FAP and MA benefits because she intentionally misrepresented her residency in order to receive benefits from the State of Michigan. To be eligible for FAP and MA benefits issued by the Department, a person must be a Michigan resident. BEM 220 (July 2014), p. 1. For FAP purposes, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if she has no intent to remain in the state permanently or indefinitely. BEM 220, p. 1. A client who resides outside the State of Michigan for more than 30 days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (July 2014), p. 3. For MA purposes, 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.

The Department presented a transaction history showing Respondent's use of her Michigan-issued FAP benefits by date and location (Exhibit A, pp. 75-79). This evidence established that beginning [REDACTED], Respondent began using her FAP benefits out of state, exclusively in [REDACTED]. While this evidence may be sufficient to establish that Respondent did not reside in Michigan and may not be eligible for FAP benefits, to establish an IPV the Department must present clear and convincing evidence that Respondent **intentionally** withheld or misrepresented information for the purpose of maintaining benefits. See 7 CFR 273.16(e)(6); 7 CFR 273.16(c).

In support of its IPV case against Respondent, in addition to the transaction history showing Respondent's out-of-state use of FAP benefits, the Department presented: (i) a signed statement from Respondent indicating she resided in [REDACTED] from [REDACTED] [REDACTED]; and (ii) signed applications for benefits submitted in [REDACTED] and [REDACTED]. On the [REDACTED] application, Respondent indicated she was homeless and provided a Michigan mailing address. In [REDACTED], Respondent

indicated that she was living at a Michigan address. While living in [REDACTED] Respondent gave birth to a child in [REDACTED]. [Exhibit A, pp. 13, 42 and 8.] Respondent's failure to notify the Department that she had moved and established residency in another state was sufficient to show by clear and convincing evidence that she had intentionally withheld information concerning her change in residency for the purpose of maintaining FAP eligibility in Michigan.

Under these circumstances, the Department has established that Respondent committed an IPV concerning her FAP case.

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. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, 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.

As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV. Thus, Respondent is subject to a disqualification from her receipt of FAP benefits on the basis of IPV. This was Respondent's first IPV.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. In this case, the Department alleges that Respondent received an OI of both FAP and MA benefits.

FAP OI

The amount of a 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 (July 2014), p. 6; BAM 705 (July 2014), p. 6.

In this case, the Department alleged a \$ [REDACTED] FAP OI during the alleged FAP fraud period based on Respondent's lack of Michigan residency. As discussed above, a client must be a Michigan resident to be eligible for Michigan-issued FAP benefits. BEM 220, p. 1. The FAP transaction history showing that Respondent was using her FAP benefits exclusively out of state from [REDACTED], coupled with the written statement and the birth of a child out of state, was sufficient to establish that Respondent was not residing in Michigan during the fraud period. BEM 212, p. 3.

In consideration of out-of-state use that began [REDACTED], and taking into account the 10-day reporting period, the 10-day processing period, and the 12-day

negative action period, the FAP OI period began [REDACTED], and not [REDACTED] [REDACTED] BAM 720, p. 7. *The proper fraud period is determined to be [REDACTED], [REDACTED].* The Department did not allege that someone other than Respondent used her FAP benefits in Michigan while she was in [REDACTED]. Although Respondent indicated in her written statement that she moved to [REDACTED] in [REDACTED], her FAP benefits were used exclusively in Michigan until [REDACTED]. The contradiction in the evidence reference the timing of Respondent's relocation to [REDACTED] is not clear until she began using her FAP benefits exclusively in [REDACTED] on [REDACTED]. The benefit summary inquiry presented by the Department showed that during the [REDACTED], and [REDACTED], fraud period, Respondent received \$ [REDACTED] in FAP benefits. [Exhibit A, pp. 80-81.] Because Respondent was not living in Michigan during the fraud period, her household was not eligible for any of the FAP benefits issued during this period.

Thus, the Department is entitled to recoup and/or collect \$ [REDACTED] from Respondent for overissued FAP benefits from [REDACTED].

MA OI

The Department also alleges an MA overissuance during the MA fraud period due to client error. The Department's right to seek an MA OI is only available if the OI is due to client error or IPV, not when due to agency error. BAM 710 (July 2013), p. 1. A client error OI occurs when the client received more benefits than entitled to because the client gave incorrect or incomplete information to the Department. BAM 700, p. 5. A change in a client's MA case due to a change in residency requires timely notice. See BAM 220 (July 2014), pp. 3-6. Because the alleged MA overissuance was due to Respondent's failure to timely report her change in residency, any MA OI resulted from client error. Therefore, the Department could seek a recoupment of an MA OI based on client error if an OI is established.

For an MA OI due to any reason other than unreported income or a change affecting the need allowances, the MA OI amount is the amount of the MA payments. BAM 710, p. 2. In this case, the Department presented a "report of capitation payments" showing the monthly insurance premiums the Department paid to provide MA coverage for all the eligible individuals in Respondent's household during this period. [Exhibit A, p. 82.] The sum of these expenses is \$ [REDACTED]. As noted above, the proper fraud period is determined to be [REDACTED].

Therefore, the Department is entitled to recoup and/or collect from Respondent an MA OI of \$ [REDACTED] for [REDACTED].

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 concerning FAP.
2. Respondent **did** receive an OI of FAP program benefits in the amount of \$ [REDACTED] for the period [REDACTED].
3. The Department **did** receive an OI of MA program benefits of \$ [REDACTED] for the period [REDACTED].

The Department is ORDERED to do the following in accordance with Department policy:

1. Initiate recoupment and/or collection procedures for the FAP OI amount of \$ [REDACTED] less any amounts that have already been recouped and/or collected, for the period [REDACTED]; and
2. Initiate recoupment and/or collection procedures for the MA OI amount of \$ [REDACTED] less any amounts that have already been recouped and/or collected, for the period [REDACTED].

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of **12 months** due to the first IPV.



DM/jaf

Denise McNulty
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]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
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[REDACTED]
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