



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: August 16, 2017
MAHS Docket No.: 17-005447
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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], 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) of FAP benefits?
3. Should Respondent be disqualified from receiving FAP benefits for ten years?

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 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 residency to the Department within 10 days.
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] (first FAP fraud period).
7. During the first 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. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
9. The Department's OIG indicates that the time period it is considering the second fraud period is [REDACTED] (second FAP fraud period).
10. During the second 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.
11. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
12. The Department's OIG indicates that the time period it is considering the MA fraud period is [REDACTED] (MA fraud period).
13. 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.
14. The Department alleges that Respondent received an OI in MA benefits in the amount of \$ [REDACTED]
15. This was Respondent's first alleged IPV of FAP benefits.

16. A notice of hearing was mailed to Respondent at the last known address and was returned by the United States 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 October 1, 2014, 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;

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 received Michigan-issued FAP benefits at the same time she was issued FAP benefits in [REDACTED]. Under Department policy, a person **cannot** receive FAP in more than one state for any month. BEM 222 (March 2013), p. 2. In support of its contention that Respondent committed an IPV, the Department presented an application submitted by Respondent on [REDACTED], in which she acknowledged that she received the Information Booklet advising of “Things You Must Do” (which explained reporting change circumstances, including residency).

The Department presented correspondence from the State of [REDACTED] which revealed that Respondent received FAP benefits in [REDACTED] from [REDACTED]. The Department further presented a benefit issuance summary relating to Respondent’s Michigan issued FAP benefits which indicated that Respondent received Michigan issued FAP benefits in during the same period. In the [REDACTED]

█████ Michigan application for FAP benefits, Respondent indicated that no one in her group was “getting other FS benefits.” Given that Respondent was receiving FAP benefits in █████ at the time she submitted the application and provided false information, it is found that the Department has established that Respondent intentionally misled the Department for the purpose of maintaining FAP program benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720 (October 2014), p. 15. 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.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 16. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is subject to a ten-year disqualification under the FAP program.

Overissuance

In this case, the Department alleged that Respondent received an OI of MA and FAP benefits. Subsequent to the scheduling of the current hearing, the Notice of Hearing and accompanying documents were mailed to Respondent via first class mail at the address identified by the Department as the last known address. After the hearing, the notice was returned by the United States Postal Service as undeliverable. When notice of a FAP IPV hearing is sent using first class mail and is returned as undeliverable, the hearing may still be held. 7 CFR 273.16((e)(3); BAM 720, p. 12. Thus, the OI will properly proceed with respect to FAP benefits only; and the Department’s request for overissuance pertaining to MA benefits is hereby **DISMISSED**.

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. At the hearing, the Department established that the State of Michigan issued a total of \$█████ in FAP benefits to Respondent during the first FAP fraud period. The Department alleges that Respondent was eligible for \$█████ in FAP benefits during this period. Likewise, the Department established that the State of Michigan issued a total of \$█████ in FAP benefits to Respondent during the second FAP fraud period.

As previously stated, the Department also presented evidence from the State of █████ which revealed that Respondent received FAP benefits from █████

██████████, as well as the benefits issuance summary which revealed that Respondent received Michigan FAP benefits during the same months. The evidence provided at the hearing clearly demonstrates that Respondent simultaneously received benefits from Michigan and ██████████ and Michigan from ██████████. Therefore, the Department has established it is entitled to recoup \$ ██████████ in FAP benefits issued to Respondent during the first FAP fraud period.

Additionally, to be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (February 2014), p. 1. For FAP purposes, a person is considered a resident while living in Michigan for purpose other than a vacation, even if he 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 (February 2014), p. 3.

In support of its contention that Respondent was overissued FAP benefits during the second FAP fraud period, the Department presented Respondent's FAP transaction history showing that she used her FAP benefits issued by the State of Michigan exclusively in ██████████ from ██████████. As previously, Respondent was no longer eligible for FAP benefits after she resided outside Michigan for more than 30 days. The Department further presented evidence which demonstrated that Respondent and the father of her children began working in ██████████ in ██████████ using an ██████████ address as their permanent residence. There is no evidence that Respondent returned to Michigan after she began work in ██████████. By ██████████, it was clear that Respondent had been residing outside the State of Michigan for more than 30 days. See BEM 212, p. 2. Therefore, the Department has established it is entitled to recoup the \$ ██████████ in FAP benefits it issued to Respondent during the second FAP fraud period.

DECISION AND ORDER

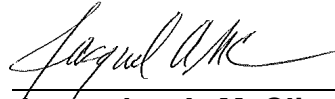
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department's request for overissuance pertaining to MA benefits is hereby **DISMISSED**.
2. The Department **has** established by clear and convincing evidence that Respondent committed an IPV of FAP benefits.
3. Respondent **did** receive an OI of program FAP benefits in the amount of \$ ██████████ for the period of ██████████.
4. Respondent **did** receive an OI of program FAP benefits in the amount of \$ ██████████ for the period of ██████████.

The Department is ORDERED to initiate recoupment procedures for the total amount of \$ [REDACTED] relating to FAP benefits in accordance with Department policy.

It is FURTHER ORDERED that Respondent is subject to a 10-year disqualification from FAP benefits.

JM/jaf



Jacquelyn A. McClinton
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]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

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