



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]
[REDACTED]

Date Mailed: August 18, 2017
MAHS Docket No.: 17-000451
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Did Respondent receive an overissuance (OI) of FAP and Medical Assistance (MA) benefits that the Department is entitled to recoup?

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 that she was required to report or disclose dual receipt of benefits and that she was required to report changes in circumstances such as 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 requirement.
6. The Department's OIG indicates that the time period it is considering the fraud for the FAP is [REDACTED], (FAP fraud period).
7. During the fraud period, the Department alleges Respondent was issued \$ [REDACTED] in FAP benefits from the State of Michigan; and she was eligible to receive \$ [REDACTED] in FAP benefits.
8. The Department alleges that during the fraud period 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 fraud for the MA is [REDACTED], (MA fraud period).
10. During the fraud period, the Department alleges that it paid \$ [REDACTED] in MA benefits on behalf of Respondent and her group members and that they were eligible to receive \$ [REDACTED] in MA benefits.
11. The Department alleges that during the fraud period Respondent received an OI in MA benefits in the amount of \$ [REDACTED]
12. The Department alleges that Respondent was issued food assistance and medical assistance benefits from the State of [REDACTED] while receiving FAP and MA benefits issued by the State of Michigan.
13. This was Respondent's first alleged IPV, and the Department has requested a 10-year FAP disqualification due to concurrent receipt of FAP benefits.
14. 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 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. 5, 12-13; ASM 165 (August 2016).

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), pp.6-7; 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 because she received FAP benefits from the State of Michigan at the same time she received food assistance benefits from the State of [REDACTED]. The Department asserted that Respondent failed to disclose her receipt of food assistance benefits from the State of [REDACTED] on the assistance applications that she submitted on [REDACTED]; [REDACTED] and [REDACTED]. A person cannot receive FAP in more than one state for any month. BEM 222 (July 2013), p. 3. The Department may verify out-of-state benefit receipt by: (i) DHS-3782, Out-of-State Inquiry; (ii) letter or document from the other state; or (iii) collateral contact with the state. BEM 222, pp. 3-4.

In support of its contention that Respondent committed an IPV, the Department presented assistance applications dated [REDACTED] [REDACTED]; [REDACTED] [REDACTED]; and [REDACTED]; on which Respondent reported being a resident of [REDACTED] County, Michigan. On the [REDACTED], and [REDACTED], applications, Respondent is asked whether she or her group members are receiving Food Stamp benefits that month; and Respondent answered “no.” Additionally, on all of the applications, Respondent reported that she is not receiving other Food Stamp benefits. (Exhibit A, pp. 11-111). The Department also presented a collateral contact email dated [REDACTED] [REDACTED] from authorities in the State of [REDACTED] in response to the Department’s email inquiry concerning Respondent. The email shows that Respondent and her two children

were issued food assistance benefits by the State of [REDACTED] from [REDACTED] [REDACTED]. A Food Stamp Issuance History from [REDACTED] was also presented. (Exhibit A, pp. 112-113) The benefit summary inquiry provided shows that Respondent was issued FAP benefits from the State of Michigan from [REDACTED]. (Exhibit A, pp. 134-136) The Department also presented Respondent's FAP transaction history which established that Respondent used Michigan issued FAP benefits out of state, exclusively in [REDACTED] from [REDACTED], establishing that she returned to live in [REDACTED] during the fraud period and was no longer a Michigan resident.

The evidence presented establishes that during the FAP fraud period, Respondent received Michigan-issued FAP benefits and during the same period, received food assistance benefits issued by the State of [REDACTED]. Thus, the Department established by clear and convincing evidence that Respondent committed an IPV of FAP benefits based on concurrent receipt of 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. Clients are disqualified for ten years for a 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.

As discussed above, 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 this case, in her [REDACTED]; [REDACTED] [REDACTED] and [REDACTED]; assistance applications for Michigan FAP benefits, Respondent reported that she and her group members were living in Michigan and not receiving other food assistance benefits, despite having an active food assistance case in [REDACTED] and receiving [REDACTED]-issued food assistance. Respondent was approved for Michigan-issued FAP benefits and used her benefits in Michigan until [REDACTED] when she moved back to [REDACTED]. Based on the evidence presented, Respondent is subject to a 10-year FAP disqualification based on concurrent receipt of benefits.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The Department alleged that Respondent was overissued \$ [REDACTED] in FAP benefits and \$ [REDACTED] in 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 (January 2016), p. 6; BAM 705 (January 2016), p. 6.

In this case, the Department alleged that Respondent received a \$ [REDACTED] FAP overissuance for the period between [REDACTED] based on her concurrent receipt of benefits. Respondent was not eligible for FAP benefits issued by the State of Michigan during any period she was issued food assistance benefits by the State of [REDACTED] ([REDACTED]). BEM 222, p. 3. Further, Respondent was eligible for food assistance benefits from the State of Michigan only if she was residing in Michigan. BEM 220 (July 2014), p. 1. Based on her transaction history, Respondent was not residing in Michigan starting in [REDACTED] and continuing through at least [REDACTED]. Additionally, the evidence showed that Respondent received food assistance benefits from the State of [REDACTED] during the period she received FAP benefits from the State of Michigan.

The benefit summary inquiry presented by the Department showed that during the fraud period, Respondent received \$ [REDACTED] in FAP benefits from the State of Michigan. Because Respondent was not eligible for concurrent receipt of benefits or for benefits while not a Michigan resident, she was not eligible for any of the FAP benefits issued during the fraud period.

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

MA OI

In this case, the Department alleges that Respondent and her group members were overissued MA benefits in the amount of \$ [REDACTED] from [REDACTED] because they received Medicaid benefits from the State of [REDACTED] at the same time that they were receiving Michigan-issued MA benefits. Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. Benefit duplication is prohibited except for MA and Food Assistance Program (FAP) in limited circumstances. BEM 222 (July 2013), pp. 1-5. With respect to MA benefits, the Department shall assume that an MA applicant is not receiving medical benefits from another state unless evidence suggests otherwise. The Department is not to delay the MA determination and upon approval, will notify the other state's agency of the effective date of the client's medical coverage in Michigan. BEM 222, p. 2.

Department policy provides that the Department may initiate recoupment of an MA OI due to client error or IPV, not when due to agency error. BAM 710 (October 2015), 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. An agency error OI is caused by incorrect action (including delayed or no action) by Department staff or Department processes. BAM 700, p. 4. The amount of an MA OI for an OI due to any reason other than unreported income or a change affecting need allowances is the amount of MA payments. BAM 710, pp. 1-2.

In support of its contention that Respondent received dual MA benefits, the Department presented a collateral contact email from authorities in [REDACTED] in response to the Department's email inquiry showing that that Respondent and her group members had

active medical assistance cases in [REDACTED] for the period of [REDACTED]. Additionally, the Department presented evidence that Respondent was issued MA benefits from the State of Michigan during this period. (Exhibit A, pp. 28-31).

Although the Department established that Respondent received dual MA benefits from the State of [REDACTED] and the State of Michigan for the same period, in order to recoup an MA OI, the Department must establish that the OI was due to client error or IPV. A review of the applications completed by Respondent indicates that Respondent reported she was a resident of the State of Michigan and was requesting MA benefits. Additionally, because Respondent did not disclose to the Department that she had medical coverage from the State of [REDACTED] at the time that she submitted any of her assistance applications, the Department established that the OI was a result of client error or IPV.

Because the Department established that the MA OI was a result of Respondent giving incorrect or incomplete information to the Department and further that the State of Michigan made \$ [REDACTED] in MA payments on Respondent and her group member's behalf for the period of [REDACTED], the Department is entitled to recoupment of the \$ [REDACTED] in overissued MA benefits.

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 based on concurrent receipt of food assistance program benefits.
2. Respondent **did** receive an OI of program benefits in the amount of \$ [REDACTED] from the FAP.
3. Respondent **did** receive an OI of program benefits in the amount of \$ [REDACTED] from the MA program.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] from the FAP and \$ [REDACTED] from the MA program in accordance with Department policy, less any amount already recouped/collected.

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP for 10 years.



Zainab A. Baydoun
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

ZB/tlf

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

Via Email:

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

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]