



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 2, 2017
MAHS Docket No.: 17-001385
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], 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?

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. The Department alleged that Respondent was aware of the responsibility to report changes in circumstances within 10 days.
5. The Department is not aware of any apparent physical or mental impairment that would limit Respondent's 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 July 1, 2013, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$1,000.00 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 \$1,000 or more, or
 - the total amount is less than \$1,000, 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 (7/1/13), 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 (July 2013), 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 his FAP benefits because he intentionally withheld information concerning his unearned income in order to receive or maintain FAP benefits from the State of Michigan. Respondent received monthly unearned income in the form of Retirement, Survivors Disability Insurance (RSDI) and a pension from Michigan Regional Council-Local 687-Carpenters (Pension). Unearned income received by the client is considered in the calculation of a client's FAP eligibility and amount. BEM 556 (July 2013), pp. 2-6, BEM 550 (July 2013), p. 1. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2013), p. 6.

In support of its IPV case against Respondent, the Department presented (i) the applications Respondent submitted to the Department in [REDACTED], [REDACTED] (redetermination), and [REDACTED] (mid-certification); (ii) RSDI Payment History report; (iii) verification of Pension payments; (iv) a Benefit Summary Inquiry showing that Respondent received FAP benefits during the fraud period; and (v) FAP OI budgets for each month of the fraud period showing the calculation of FAP benefits Respondent would have been eligible to receive if the alleged unreported income had been included in the determining his FAP eligibility and allotment at the time of issuance.

Respondent began receiving RSDI on [REDACTED]. During the fraud period, he received \$ [REDACTED] per month in RSDI payments. He began receiving a monthly pension in the amount of \$ [REDACTED] in [REDACTED]. [Exhibit A, pp. 70-72.]

The Department testified that Respondent failed to report his unearned income until [REDACTED]. Respondent was made aware that he was required to report any change in income within 10 days at the time he submitted his initial application for assistance in [REDACTED] [Exhibit A, p. 27.] Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105 (July 2013), p. 8.

Subsequently, when he began receiving the unearned income, he failed to inform the Department of the change in circumstances. In [REDACTED], Respondent submitted a redetermination application and denied having any income. [Exhibit A, p. 22.] Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2013), p. 6. The Department was not aware of any apparent physical or mental impairment that would limit Respondent's understanding or ability to fulfill this requirement.

Because Respondent did not report his unearned income and continued to deny having any income, it is found that the Department has presented clear and convincing evidence that Respondent withheld information for the purpose of maintaining or preventing reduction of his FAP benefits. Under these circumstances, the Department has established that Respondent committed an IPV concerning his 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 his 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 2013), p. 6; BAM 705 (July 2013), p. 6.

In this case, the Department alleged a \$ [REDACTED] FAP OI during the alleged FAP fraud period due to Respondent's failure to report his unearned income. As discussed above, a client has the duty to report his unearned income. Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105 (July 2013), p. 8. Unearned income is considered when making a determination of eligibility for benefits and the level of benefits to be issued. BEM 556 (July 2013), pp. 2-6, BEM 550 (July 2013), p. 1. The Department submitted benefit summary inquiry which shows Respondent was issued benefits during the fraud period. [Exhibit A, pp. 73-75.]

After consideration of Respondent's unearned income, it was determined that Respondent was only eligible for \$ [REDACTED] of the \$ [REDACTED] of FAP benefits issued to him. [Exhibit A, pp. 76-116.]

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 OI during the 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 OI was due to Respondent's failure to timely report his change in unearned income, 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 OI due to unreported income or a change affecting need allowances: (i) If there would have been a deductible or larger deductible, the OI amount is the correct deductible (minus any amount already met) **or** the amount of MA payments, whichever is less; (ii) if there would have been a larger Long Term Care (LTC), hospital or post-eligibility patient-pay amount, the OI amount is the difference between the correct and incorrect patient-pay amounts **or** the amount of MA payments, whichever is less. For an OI due to **any other** reason, the OI amount is the amount of MA payments. BAM 710 (July 2013), p. 2.

In this case, the Department presented an Expenditure Summary showing the claim and capitation costs during the fraud period. [Exhibit A, p. 118.] Also included in the evidence was a Report of Medical Services Paid and a Report of Capitation Payments made on Respondent's behalf for MA benefits. [Exhibit A, pp. 119-127.] The total MA benefits issued on Respondent's behalf was \$ [REDACTED] during the fraud period of [REDACTED]. This case did not involve a deductible or LTC, hospital or patient-pay amounts.

The Department, after considering the unreported unearned income, determined that Respondent was eligible for \$ [REDACTED] in MA benefits received during the fraud period. As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV.

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]

[REDACTED]

[REDACTED]

[REDACTED]