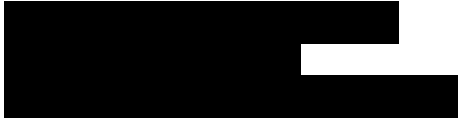




RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR



Date Mailed: September 20, 2017
MAHS Docket No.: 17-003627
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 August 22, 2017, 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. The Notice of Disqualification Hearing (MAHS-827) sent to Respondent was not returned as undeliverable. In accordance with 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5), and Bridges Administration Manual (BAM) 720 the hearing proceeded in Respondent's absence.

ISSUE

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
3. Did Respondent receive an over-issuance (OI) of Medical Assistance (MA) benefits that the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1. On March 13, 2008, Respondent's husband, [REDACTED] was convicted of a drug related felony in Illinois.

2. On February 5, 2009, Respondent's husband, [REDACTED] was convicted of another drug related felony in Illinois.
3. On September 19, 2014, Respondent submitted and signed an Assistance Application (DHHS-1171). The household consisted of: Respondent age 22; [REDACTED] age 31; [REDACTED] age 6, daughter of Respondent and step daughter of [REDACTED] [REDACTED] age 3, son of Respondent and stepson of [REDACTED] and [REDACTED] less than 1 year old and son of Respondent and [REDACTED]. The Department did not submit the entire application, specifically the response to questions about household members convicted of drug related felonies after August 22, 1996. Respondent's signature certified knowledge of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.
4. On November 20, 2014, Respondent submitted and signed a Redetermination (DHS-1010) for Medical Assistance (MA) eligibility re-determination. On the Redetermination (DHS-1010), Respondent stated her husband had been convicted of a drug related felony but was not convicted more than once. Respondent's signature certified knowledge of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.
5. On June 11, 2015, Respondent began receiving Food Assistance through the state of Illinois. The assistance continued through September 9, 2016.
6. On June 17, 2015, Respondent began using her Michigan Food Assistance Program (FAP) Electronic Benefit Transfer (EBT) Card in Illinois. The Michigan Food Assistance Program (FAP) benefits were used in Illinois until October 7, 2015.
7. On October 28, 2016, Respondent submitted and signed a Assistance Application (DHS-1171) for Food Assistance Program (FAP) benefits. On the application Respondent stated her husband had been convicted of a drug related felony but was not convicted more than once. Respondent's signature certified knowledge of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.
8. Respondent had no apparent physical or mental impairment that would limit her understanding or ability to provide true and accurate information in the Redetermination (DHS-1010).
9. Respondent committed an Intentional Program Violation (IPV) on November 20, 2014, by intentionally failing to report that her husband had been convicted of two separate drug related felonies prior to August 22, 1996.
10. Respondent committed an Intentional Program Violation (IPV) in June 2015, by intentionally failing to report a change of physical residence to Illinois and

continuing to receive and use Michigan Food Assistance Program (FAP) benefits when no longer a physical resident of Michigan and no longer eligible for benefits through Michigan.

11. The Department alleges Respondent's Intentional Program Violation (IPV) caused an over-issuance of Food Assistance Program (FAP) between October 1, 2014 and March 31, 2017. However, the Department has not submitted sufficient clear and convincing evidence to establish this alleged over-issuance period has been properly calculated in accordance with Bridges Administration Manual (BAM) 720.
12. The Department alleges Respondent's Intentional Program Violation (IPV) in June 2015 caused an over-issuance of Medical Assistance (MA) benefits from May 2015 through September 2016. However, the Department has not submitted sufficient clear and convincing evidence to establish this alleged over-issuance period has been properly calculated in accordance with Bridges Administration Manual (BAM) 720. Neither has the Department submitted any evidence showing the amount of Medical Assistance (MA) benefits issued to Respondent's benefit group.
13. This is Respondent's 1st Intentional Program Violation (IPV).

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.

Bridges Administration Manual (BAM) 720 Intentional Program Violation (10-1-2015) governs the Department's actions in this case. OIG requests IPV hearing for cases involving:

1. FAP trafficking over-issuances that are not forwarded to the prosecutor.

2. 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 or more, **or**

The total amount is less than \$500, **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.

INTENTIONAL PROGRAM VIOLATION

BAM 720 states that a 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.

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. In other words, the Department must show that the Respondent engaged in a fraudulent act or omission they knew would result in receiving assistance they were not eligible for.

Bridges Eligibility Manual (BEM) 203 Criminal Justice Disqualifications, at page 4 states:

DRUG-RELATED FELONY

FIP and FAP

1st Offense

A person who has been convicted of a felony for the use, possession, or distribution of controlled substances is disqualified if:

Terms of probation or parole are violated, **and**
The qualifying conviction occurred after August 22, 1996.

If an individual is not in violation of the terms of probation or parole:

FIP benefits must be paid in the form of restricted payments.
Receipt of FAP benefits requires an authorized representative.

2nd Offense

An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both offenses occurred after August 22, 1996.

In this case, the Department presented two Assistance Applications (DHS-1171) that Respondent submitted to the Department. Both applications show that Respondent certified knowledge of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences.

The Department submitted evidence showing that Respondent began using Michigan Food Assistance Program benefits outside Michigan beginning June 17, 2015. Respondent committed an Intentional Program Violation (IPV) by intentionally failing to report a change of physical residence to Illinois and continuing to receive and use Michigan Food Assistance Program (FAP) benefits when no longer a physical resident of Michigan and no longer eligible for benefits through Michigan.

The November 20, 2014 application submitted into evidence shows that Respondent misrepresented her husband's criminal record and signed the documents certifying that the information provided was true. Respondent committed an Intentional Program Violation (IPV) on November 20, 2014, by intentionally failing to report that her husband had been convicted of two separate drug related felonies prior to August 22, 1996.

The Department has established that Respondent committed an IPV.

OVER-ISSUANCE

Over-issuance Period

BAM 720 states that the over-issuance period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy **or** 72 months (6 years) before the date it was referred to the RS, whichever is later.

To determine the first month of the over-issuance period (for over-issuances 11/97 or later) Bridges allows time for:

The client reporting period, per BAM 105.

The full standard of promptness (SOP) for change processing, per BAM 220.

The full negative action suspense period.

The over-issuance period ends the month (or pay period for CDC) before the benefit is corrected.

7 CFR § 273.16 Disqualification for intentional Program violation

(e) Disqualification Hearings (8) Imposition of disqualification penalties (i) states:

If the hearing authority rules that the individual has committed an intentional Program violation, the household member must be disqualified in accordance with the disqualification periods and procedures in paragraph (b) of this section. The same act of intentional Program violation repeated over a period of time must not be separated so that separate penalties can be imposed.

In this case, the Department submitted evidence showing that Respondent submitted a fraudulent application on November 20, 2014. However, the Department alleges that Respondent's Intentional Program Violations caused an over-issuance of Food Assistance Program (FAP) benefits beginning October 1, 2014. However, the evidence is only sufficient to establish that Respondent committed an Intentional Program Violation (IPV) on November 20, 2014. In accordance with the calculation requirements cited above, the over-issuance could not start before the Intentional Program Violation (IPV).

Over-issuance Amount

BAM 720 states the over-issuance amount is the benefit amount the client actually received minus the amount the client was actually eligible to receive. The Department has failed to present evidence of correctly calculated over-issuance periods for either Food Assistance Program (FAP) or Medical Assistance (MA) issuance. The Department has also failed to present evidence of correctly calculated over-issuance amounts.

DISQUALIFICATION

In accordance with 7 CFR §273.16(e)(8)(i), BAM 720 states that a court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. 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.

Clients who commit an IPV are disqualified for a standard disqualification period of one year for the first IPV, two years for the second IPV and a lifetime disqualification for the third IPV.

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, finds that the Department has established by clear and convincing evidence that Respondent committed a Food Assistance Program (FAP) Intentional Program Violation (IPV).

The Department HAS NOT established by clear and convincing evidence that Respondent committed a Medical Assistance (MA) Intentional Program Violation (IPV).

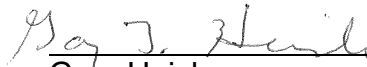
The Department HAS NOT established that Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup.

The Department HAS NOT established that Respondent receive an over-issuance (OI) of Medical Assistance (MA) benefits that the Department is entitled to recoup.

This is Respondent's 1st Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and the Department must disqualify Respondent from receiving Food Assistance Program (FAP) benefits in accordance with 7 CFR §273.16(e)(8)(i) and Bridges Administration Manual (BAM) 720.

It is ORDERED that any collection action regarding Food Assistance Program (FAP) or Medical Assistance (MA) over-issuance is REVERSED.

GH/nr



Gary Heisler
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]

[REDACTED]

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]