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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: September 13, 2017
MAHS Docket No.: 17-007027
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION FOR CONCURRENT BENEFITS
INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services ("Department" or "MDHHS"), 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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on September 7, 2017, from Lansing, Michigan. [REDACTED], Regulation Agent of the Office of Inspector General (OIG), represented the Department. Respondent did not answer the telephone, and therefore; failed to appear at the hearing. The hearing 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)?
3. Should Respondent be disqualified from receiving 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 April 27, 2017, to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, allegedly committed an IPV.

2. The Department's OIG has requested that Respondent be disqualified from receiving FAP benefits.
3. Respondent applied for and received FAP and MA benefits issued by the Department. [Exhibit 1, pp. 52-58, 69-70].
4. On November 3, 2014, Respondent signed an Assistance Application, which certified that she intended to remain in the state of Michigan. [Exh. 1, pp. 12-52].
5. On or about July 1, 2015, Respondent relocated outside the State of Michigan, but failed to report this change to the Department. [Exh. 1, pp. 67-68].
6. Respondent was aware of the responsibility to report changes in her residence to the Department. [Exh. 1, pp. 12-52].
7. Respondent failed to timely report a change in circumstances to the Department. [Exh. 1, p. 69].
8. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
9. The Department's OIG indicates that the time period they are considering the FAP fraud period is September 1, 2015, through October 31, 2015.
10. During the alleged FAP fraud period, Respondent was issued \$ [REDACTED] in FAP benefits from the State of Michigan. [Exh. 1, p. 69].
11. The Department's OIG alleges that the time period they are considering the MA fraud period is September 1, 2015, through November 30, 2016. [Exh. 1, pp. 70, 71-72].
12. During the alleged MA fraud period, Respondent incurred \$ [REDACTED] in MA expenditures. [Exh. 1, pp. 70, 71-72].
13. The Department's OIG alleges that Respondent received a total FAP and MA OI in the amount of \$ [REDACTED] [Exh. 1, pp. 69, 70-72].
14. Respondent was issued Supplemental Nutrition Assistance Program (SNAP) or FAP benefits from the states of Michigan and California in the same month during the above fraud periods. [Exh. 1, pp. 59-66, 67-68].
15. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services 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 of Health and Human Services (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.

Intentional Program Violation

An Intentional Program Violation (IPV) is a benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representative. Bridges Program Glossary (BPG) (10-1-2015), p. 36.

The OIG represents the MDHHS during the hearing process for IPV hearings. OIG requests IPV hearings when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located. **Exception:** For FAP only, OIG will pursue an IPV hearing when correspondence was sent using first class mail and is returned as undeliverable. BAM 720 (1-1-2016), p. 12. [Emphasis in original].

The OIG requests IPV hearings for cases involving:

1. FAP trafficking overissuances 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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, **or**

- the total OI 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.

See BAM 720, p. 12.

An IPV is suspected when there is clear and convincing evidence that the client or CDC provider 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).

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 720, p. 1. [Emphasis in original].

Clear and Convincing Evidence

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). BAM 720, p. 1. The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

In this case, the Department alleges that Respondent committed an IPV when she failed to timely and properly report to the Department a change of address in order to receive an OI of FAP and MA benefits. The Department further contends that Respondent received FAP benefits from Michigan and from another state (California) during the same time period, which is a violation of policy and federal law. Respondent failed to appear at the hearing.

In order to be eligible for FAP benefits from the Department, a person must be a Michigan resident. BEM 220 (1-1-2016), p. 1. A person is considered to be a Michigan resident if he (or she) is living in the State, except for vacationing, even if he or she has no intent to remain in the State permanently or indefinitely. BEM 220, p. 1. [Emphasis supplied].

For all programs, including MA, benefit duplication means assistance received from the **same** (or same **type** of) program to cover a person's needs for the same month. BEM 222 (10-1-2016), p. 1. A person **cannot** receive FAP in more than one state for any month. BEM 222, p 3.

Department policy requires FAP recipients to report changes in circumstances that potentially affect eligibility or benefit amount. BAM 105 (10-1-2016), pp. 10-11. Specifically, they must report changes in circumstances within 10 (ten) days after the client is aware of them. BAM 105, p 10. These changes include, but are not limited to, changes regarding: (1) persons in the home; (2) marital status; (3) address and shelter cost changes that result from the move; (4) vehicles; (5) assets; (6) child support expenses paid; (7) health or hospital coverage and premiums; or (8) child care needs or providers. BAM 105, pp. 10-11.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The following is the Administrative Law Judge's findings based on the clear and convincing evidence on the whole record.

As indicated in the above Findings of Fact, Respondent relocated from Michigan to the state of California beginning on or around July 1, 2015. Respondent used her Michigan-issued Electronic Benefit Transfer (EBT) card in California for a period in excess of 30 (thirty) days, which demonstrates a change of residency. Respondent also incurred MA expenditures in California during the above MA fraud period. Respondent failed to properly and timely report this change to the Department. Respondent was advised of her rights and responsibilities concerning program benefits. Respondent's electronic signature on the online assistance application in this record certifies that she was aware of these rights and responsibilities. Respondent had no apparent physical or mental impairment that limits her understanding or ability to fulfill these reporting

responsibilities. The record shows that Respondent intentionally and fraudulently failed to report a change of address in order to receive an OI of FAP and MA benefits. Accordingly, this Administrative Law Judge finds clear and convincing evidence on the whole record that Respondent committed an IPV because she intentionally failed to report information needed to make a correct benefits determination.

Disqualification

The Department has requested that Respondent be disqualified from receiving program benefits. A disqualified person is “[a] person(s) who is ineligible for program benefits because an eligibility factor is not met or because the person refuses or fails to cooperate in meeting an eligibility factor.” BPG, p. 20. A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 13.

A disqualification period is defined as, “[t]he length of time, established by MDHHS, during which eligibility for program benefits does not exist.” BPG, p. 20. Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. 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.

Based upon the above Findings of Fact, this Administrative Law Judge finds that Respondent was guilty of an IPV that involves the concurrent receipt of FAP benefits. Accordingly, Respondent shall be personally disqualified from receiving FAP benefits for a period of 10 years.

Overissuance

The Department must also show that Respondent received an overissuance (OI) of FAP and MA benefits. According to Department policy, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, (10-1-2016) p. 1.

In this matter, the Department has shown that Respondent received an OI of FAP and MA benefits due to an IPV. Based on the above Findings of Fact and Conclusions of Law, the FAP OI resulted because Respondent received \$ [REDACTED] in FAP benefits, but was lawfully entitled to receive \$ [REDACTED] during the period indicated above. The above Findings of Fact and Conclusions of Law also show that the MA OI resulted because Respondent received \$ [REDACTED] in MA benefits, but was lawfully entitled to receive \$ [REDACTED] in MA benefits during this period. This resulted in an MA OI in the amount of \$ [REDACTED]. The total OI for both FAP and MA is \$ [REDACTED] (\$ [REDACTED] + \$ [REDACTED] = \$ [REDACTED]). According to BAM 700, the Department may recoup this OI.

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:

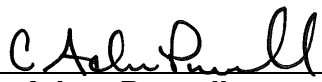
1. Respondent did commit a FAP and MA IPV by clear and convincing evidence.
2. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED]
3. Respondent did receive an OI of MA benefits in the amount of \$ [REDACTED]
4. Respondent did receive a total OI of FAP and MA benefits in the amount of \$ [REDACTED]

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent shall be disqualified from FAP benefits in Michigan for a period of 10 years.

IT IS SO ORDERED.

CAP/md



C. Adam Purnell
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

Petitioner

[REDACTED]

DHHS

[REDACTED]

Respondent

[REDACTED]