



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: June 30, 2017
MAHS Docket No.: 17-000602
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 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 June 26, 2017, 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 January 10, 2017, 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 her circumstances to the Department, 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 period for the FAP and MA programs is May 1, 2015, to June 30, 2015 (fraud period).
7. During the FAP fraud period, the Department alleges that Respondent was issued \$288 in FAP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$288.
9. During the MA fraud period, the Department alleges that it paid \$1,003.04 in MA benefits on Respondent's and her daughter's behalf and alleges that Respondent and her daughter were entitled to \$0 in such benefits during this time period.
10. The Department alleges that Respondent received an OI in MA benefits in the amount of \$1,003.04.
11. This was Respondent's first alleged IPV.
12. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the U.S. Post Office 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 January 1, 2016, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500 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 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.

BAM 720 (January 2016), pp. 5, 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), pp. 7-8; 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 failed to report to the Department that her address changed and that she no longer resided in Michigan, but continued to receive and use Michigan issued FAP benefits while living out of state, causing an OI of FAP benefits. Clients must report changes, such as changes in address to the Department within 10 days after the client is aware of them. BAM 105 (July 2015), pp. 10-11. To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (January 2016), p. 1. A person is considered a resident while living in Michigan for any 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 21 2 (October 2015), pp. 2-3.

The Department presented Respondent's IG-311 FAP transaction history which showed that from February 26, 2015 to June 30, 2015, Respondent used FAP benefits issued to her by the State of Michigan exclusively out of state. The transaction history showed that Respondent returned to Michigan and began making purchases in Michigan on July 11, 2015. (Exhibit A, pp. 63-66). The Department also presented a Lexis Nexis search summary which showed that Respondent had addresses associated with her name in NY during the period of out of state use. (Exhibit A, pp. 67-69). The Department testified that it made collateral contact telephone calls with school officials in NY and MI with respect to Respondent's daughter's school enrollment and documented such contacts using a Telephone Call Record. According to the Telephone Call Records provided, Respondent's daughter was enrolled in school in Michigan until March 2015 at which time, she was transferred to an elementary school in NY where she remained enrolled until June 30, 2015. As of December 2016, Respondent's daughter had returned to school in Michigan. (Exhibit A, pp. 70-71).

While this evidence may be sufficient to establish that Respondent no longer resided in Michigan and was no longer eligible for FAP benefits, to establish an IPV, the

Department must present clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of establishing or maintaining benefit eligibility.

In support of its contention that Respondent committed an IPV, the Department presented an assistance application that was submitted by Respondent on [REDACTED], 2015, prior to the alleged fraud period and prior to the period of out-of-state use. (Exhibit A, pp. 11-62). While this may be sufficient to establish that Respondent was advised of her responsibility to report changes in circumstances, it does not establish, by clear and convincing evidence, that Respondent intentionally withheld information concerning an out-of-state move for the purpose of establishing or maintaining her Michigan FAP eligibility.

In the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented her change in residence for the purpose of maintaining Michigan FAP eligibility, the Department has failed to establish that Respondent committed an IPV of FAP 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 10 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 lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department failed to establish that Respondent committed a FAP IPV. Therefore, Respondent is **not** subject to a disqualification from the FAP.

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 due to Respondent's failure to accurately report her residency, she received an OI of 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 (January 2016), p. 6; BAM 705 (January 2016), p. 6. Clients are not eligible for FAP benefits if they do not reside in Michigan. BEM 220, p. 1. At the hearing, the Department presented a FAP transaction history that established that Respondent began using Michigan-issued FAP benefits out of state on February 26, 2015, and continued to do so through June 2015. In the absence of any contrary evidence, this established that Respondent did not reside in Michigan and was not eligible for any FAP benefits issued by the Department during this period.

The Department presented a Benefit Summary Inquiry, which shows that Respondent's group was issued FAP benefits from the State of Michigan during the fraud period in the total amount of \$288. (Exhibit A, p. 72). Additionally, based on out-of-state use that began on February 26, 2015, the Department properly determined that the first month of the OI period would be May 2015. (See BAM 720, p. 7). Because the Department established that Respondent was entitled to \$0 during the overissuance/fraud period, the Department is entitled to recoup or collect the \$288 it issued in FAP benefits to Respondent during the period between May 2015 and June 2015.

MA OI

The Department also sought to recoup an alleged MA overissuance in the amount of \$1,003.04 for the period of May 2015 to June 2015 because Respondent and her child lacked Michigan residency. A person must be a Michigan resident to receive MA issued by the Department. BEM 220, p. 1. For MA purposes, an individual is a Michigan resident if either (i) the individual lives in Michigan, except for a temporary absence, and intends to remain in Michigan permanently or indefinitely or (ii) the individual or a member of the MA fiscal group has entered the State of Michigan for employment purposes and has a job commitment or is seeking employment. BEM 220, pp. 1-2. An absence is temporary for MA purposes if it does not last an entire month. BEM 211 (July 2013), pp. 2-6.

The Department's evidence was sufficient to establish that Respondent and her daughter were not Michigan resident for MA purposes during the fraud period. The Department may initiate recoupment of an MA overissuance only 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. In this case, the Department established that the error resulting in overissued MA benefits was a client error. Therefore, the Department may seek to recoup the MA overissuance.

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. The Department established that the State of Michigan paid \$1,003.04 in MA payments to provide Respondent and her child with MA coverage from May 2015 to June 2015. (Exhibit A, p. 74). Based on the evidence presented, the Department is eligible to recoup and/or collect from Respondent an MA OI of \$1,003.04.

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 not** established by clear and convincing evidence that Respondent committed an IPV of the FAP.

2. Respondent **did** receive an OI of program benefits in the amount of \$288 from the FAP.
3. Respondent **did** receive an OI of program benefits in the amount of \$1,003.04 from the MA program.

The Department is ORDERED to initiate recoupment/collection procedures for the FAP OI amount of \$288 and for the MA OI amount of \$1,003.04 in accordance with Department policy, less any amount already recouped/collected.



ZB/tlf

Zainab A. Baydoun
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

Via Email:

MDHHS-STCLAIR-
HEARINGS@michigan.gov
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

[REDACTED]
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