



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: December 19, 2017
MAHS Docket No.: 17-008199
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Denise McNulty

HEARING DECISION FOR CONCURRENT BENEFITS
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 Regulations, particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on December 19, 2017, from Detroit, Michigan. The Department was represented by [REDACTED], of the Office of Inspector General (OIG). The Respondent represented herself.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent receive an overissuance (OI) of Medical Assistance (MA) benefits that the Department is entitled to recoup?
3. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
4. Should Respondent be disqualified from receiving 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 May 30, 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 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. Respondent was aware of the responsibility to report changes in her residence to the Department.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. Respondent began using FAP benefits outside of the State of Michigan beginning in July 1, 2015.
7. The OIG indicates that the time period they are considering the fraud period is October 1, 2015, to August 31, 2016, (fraud period).
8. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP benefits and \$ [REDACTED] in MA benefits from the State of Michigan.
9. During the alleged fraud period, Respondent was issued MA benefits from the State of Tennessee.
10. This was Respondent's first alleged IPV.
11. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Service 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.

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), p. 5.

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 (October 2015), 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. 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 and used them exclusively in Tennessee after July 1, 2015. [Exhibit A, p. 17.] The Department alleged Petitioner was not a resident of Michigan after August 17, 2017, when she purchased a home in Tennessee. [Exhibit A, pp. 20-23.] The Department further alleges that Respondent committed an IPV of her MA benefits by obtaining concurrent benefits in Tennessee in May 2016. [Exhibit A, p. 24.] A person **cannot** be a member of more than one FAP Certified Group (CG) in any month. BEM 222 (October 2016), p. 3. A person **cannot** receive FAP in more than one state for any month. BEM 222 (October 2016), p. 3. A person is disqualified for a period of 10 years beginning with the date of conviction if convicted in court of having made a fraudulent statement or representation regarding their residence in order to receive assistance simultaneously from two or more states. BEM 203 (January 2018), p. 1.

In support of its IPV allegations, the Department presented (i) a redetermination Respondent submitted to the Department on August 25, 2014, in which Respondent acknowledged her responsibility to report any change in residence within 10 days, [Exhibit A, p. 16]; (ii) documentation from ██████████ in Tennessee showing Respondent purchased a home in August 2015 in Tennessee [Exhibit A, pp. 20-23]; (iii) correspondence with the Department of Human Services in Tennessee, showing Respondent began receiving food assistance in April 2016 and medical benefits in May 2016 [Exhibit A, pp. 24-25]; (iv) a benefit summary inquiry showing that the Department issued FAP benefits to Respondent between July 2015 and February 2016, [Exhibit A, p. 30]; (v) the Electronic Benefit Transfer (EBT) history showing the use of Michigan-issued FAP benefits exclusively in Tennessee from July 2015 through March 2016, [Exhibit A, pp. 17-18]; and (vi) a medicaid capitation of payments for medical insurance for Respondent during the fraud period, [Exhibit A, p. 33]; and (vii) an expenditure summary of medical benefits and the report of medical services paid on Respondent's behalf during the fraud period. [Exhibit A, pp. 31-32.] While this evidence may be sufficient to establish

that Respondent may have been overissued benefits, to establish an IPV, the Department must present clear and convincing evidence that Respondent **intentionally** withheld or misrepresented information for the purpose of maintaining benefits.

The Department alleges Respondent failed to report her change in address which caused benefits to continue to be issued to her during the fraud period. Respondent disputed that allegation. She testified that she contacted her worker in June-July 2015 to advise them that she was going out-of-state for a while and to cease issuance of benefits. Respondent also testified that she contacted the medical supply company to request that they cease sending her medical supplies as she was going out-of-state. Respondent stated that she did not receive any medical supplies from that company after leaving Michigan. Although Respondent's MA benefits were still active in Michigan at the time she was approved and began receiving MA benefits in Tennessee, there is no evidence that she made a fraudulent statement or representation regarding her residence in order to receive assistance simultaneously from two states.

Respondent stated she initially went to visit family in Tennessee in June 2015. Shortly thereafter, she was hospitalized. Respondent decided to relocate to Tennessee and purchased a home to be near family because she had no family in Michigan to assist her when she was ill. Respondent admitted she not only purchased a home but had also obtained a Tennessee operator's license in October 2015.

Respondent denied using her Electronic Benefits Transfer (EBT) card during the fraud period. She stated that the card, along with other property, had been placed in storage. The evidence presented by the Department showed the card was usually swiped when used in Tennessee during the fraud period.

Under these circumstances, it is found that the Department has not met its burden of proof to demonstrate by clear and convincing evidence that Respondent committed an intentional violation of her FAP benefits or MA 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 (October 2015), 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.

A person is disqualified for a period of 10 years beginning with the date of conviction if convicted in court of having made a fraudulent statement or representation regarding their residence in order to receive assistance simultaneously from two or more states. BEM 203 (January 2018), p. 1.

As discussed above, the Department has not established by clear and convincing evidence that Respondent committed an IPV of her FAP benefits. Thus, Respondent is not subject to a period of disqualification from her receipt of FAP benefits on the basis of IPV. The Department did not establish by clear and convincing evidence that Respondent committed an IPV by concurrent receipt of MA benefits. Respondent is not subject to a 10-year period of disqualification from receipt of MA 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 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 (1/1/16), p. 6; BAM 705 (1/1/16), p. 6.

FAP OI

In this case, the Department alleged that Respondent was overissued FAP benefits totaling \$ [REDACTED] during the fraud period. The Department presented a benefit summary inquiry showing that Respondent was issued \$ [REDACTED] in FAP benefits during the fraud period. [Exhibit A, p. 30.] An individual must be a Michigan resident to be eligible for Michigan-issued FAP benefits. BEM 220 (October 2015), p. 1. The FAP transaction history shows Respondent's EBT card was used exclusively out of state from July 2015 to March 2016. Respondent admitted moving from Michigan and establishing residency in Tennessee as early as August 2015. As such, Respondent was not residing in Michigan during the FAP fraud period. BEM 212 (October 2015), p. 3.

The Department properly took into consideration the facts of this case when it applied the 10-day reporting period, the 10-day processing period, and the 12-day negative action period, in determining the FAP OI period to be October 2015 through August 2016. BAM 720 (October 2015), p. 7. The benefit summary inquiry presented by the Department showed that during the fraud period, Respondent received \$ [REDACTED] in FAP benefits [Exhibit A, p. 30.] Because Respondent was not a Michigan resident during the fraud period, her household was not eligible for any of the FAP benefits issued to her during the fraud period. Respondent, as the grantee in her FAP group, is responsible for the transactions made with her EBT card.

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

MA OI

The Department also alleges an overissuance of MA benefits 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 (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 (October 2015), p. 6. A change in a client's MA case due to a change in residency requires timely notice. See BAM 220 (October 2015), pp. 2-4. Because the alleged MA overissuance was due to

Respondent's failure to timely report her change in residency, the MA OI resulted from client error. Therefore, the Department could seek a recoupment of an MA overissuance based on client error if an overissuance is established.

Although, Respondent testified she notified the Department that she would be out of state for a while she failed to indicate she had moved out of state permanently. Policy does not require benefit cases to be closed simply because an individual indicates they will be temporarily absent from the state. BEM 220 (January 2016), pp. 1-2.

For an MA OI due to any reason other than unreported income or a change affecting the need allowances, the MA OI amount is the amount of the MA payments. BAM 710 (October 2015), p. 2. In this case, the Department presented an expenditure summary showing the total MA payments made by the Department on Respondent's behalf during the fraud period and a "report of capitation payments" showing the monthly insurance premiums the Department paid to provide MA coverage for all the eligible individuals in Respondent's household during the fraud period. [Exhibit A, pp. 31-33.] The sum of these expenses is \$ [REDACTED]

Therefore, the Department is entitled to recoup and/or collect \$ [REDACTED] from Respondent for an OI of 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 not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP benefits in the amount of \$ [REDACTED]
3. The Department **did** receive an OI of MA benefits in the amount of \$ [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.
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.

It is FURTHER ORDERED that Respondent is **not subject** to a period of disqualification from receipt of MA or FAP benefits.



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]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

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