



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: November 8, 2017
MAHS Docket No.: 17-009540
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Laura Gibson

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, 42 CFR 431.230(b), 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 November 7, 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 Medicaid (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 June 20, 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 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 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 FAP fraud period is December 7, 2015 to August 31, 2016 (FAP fraud period).
7. During the FAP fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
9. The Department alleges that Respondent was issued food assistance benefits from the State of Virginia while receiving FAP benefits issued from the State of Michigan from December 2015 to May 2016.
10. This was Respondent's first alleged IPV, and the Department has requested a ten-year disqualification due to concurrent receipt of benefits.
11. The Department's OIG indicates that the time period it is considering the MA fraud period is May 1, 2016 to August 31, 2016 (MA fraud period).
12. During the MA fraud period, Respondent was issued \$ [REDACTED] in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
13. The Department alleges that Respondent received an OI in MA benefits in the amount of \$ [REDACTED]
14. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services 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 October 1, 2014, 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), pp. 5, 12-13; ASM 165 (August 2016).

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 and April 2016), pp. 8-11. To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (July 2014 and 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 212 (October 2015), pp. 2-3.

The Department also alleged that Respondent committed an IPV of the FAP because she received FAP benefits from the State of Michigan at the same time she received food assistance benefits from the State of Virginia. A person cannot receive FAP in more than one state for any month. BEM 222 (July 2013), p. 3. The Department may verify out-of-state benefit receipt by: (i) DHS-3782, Out-of-State Inquiry; (ii) letter or document from the other state; or (iii) collateral contact with the state. BEM 222, p. 4.

The Department presented a Work Number report showing that Respondent began working in [REDACTED] on [REDACTED], and Respondent's IG-311 FAP transaction history which showed that from [REDACTED], Respondent used FAP benefits issued to her by the State of Michigan out-of-state (Exhibit A, pp. 54-61). 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 based on a failure to report a change in address or residency, 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 December 5, 2015, prior to the alleged fraud period and period of out-of-state use, on which Respondent reports that she lives in Michigan. (Exhibit A, pp. 10-42). This may be sufficient to establish that Respondent was advised of her responsibility to report changes in circumstances; however, 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. Thus, the Department has not established by clear and convincing evidence that Respondent committed on IPV of FAP benefits based on her failure to report a change in her residency.

With respect to the concurrent receipt of FAP benefits, the Department presented documents obtained from a collateral contact made with authorities in the State of [REDACTED] which establish that Respondent was issued food assistance benefits by the State of [REDACTED] from December 2015 to May 2016 (Exhibit A, pp. 44-53). The FAP benefit summary inquiry provided shows that Respondent was issued FAP benefits from the State of Michigan during the fraud period of December 2015 to May 2016 (Exhibit A, pp. 62-63).

The evidence presented establishes that between December 2015 and May 2016, Respondent received Michigan-issued FAP benefits and during this same period, received food assistance benefits issued by the State of [REDACTED]. Thus, the Department established by clear and convincing evidence that Respondent committed an IPV of FAP benefits based on concurrent receipt of 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 ten years for a FAP IPV involving concurrent receipt of benefits where the client made fraudulent statement regarding identity or residency, 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 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 through concurrent receipt of food assistance benefits from two states at the same time. In order to apply the ten-year disqualification for concurrent receipt of benefits however, the Department must establish that the client made fraudulent statements regarding identity or residency. BEM 720, p. 16.

In this case, in her December 5, 2015 application for Michigan FAP benefits, Respondent reported that she was living in Michigan and Respondent was approved for Michigan issued FAP benefits. The evidence showed that Respondent used her FAP benefits in Michigan after her application was approved. The Department did not present any additional assistance applications from the State of Michigan or from the State of [REDACTED] completed during the fraud period on which Respondent made fraudulent statements regarding her identity or residency. Thus, under these facts, the Department failed to present evidence that Respondent made a fraudulent statement regarding identity or residency for the purpose of obtaining concurrent benefits. Therefore, Respondent is not subject to a ten-year disqualification. However, she is subject to the standard one-year disqualification from receipt of FAP benefits based on concurrent receipt of 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. 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 (October 2015 and January 2016), p. 6; BAM 705 (October 2015 and January 2016), p. 6.

In this case, the Department alleged that Respondent received a \$ [REDACTED] FAP overissuance for the period between December 2015 and August 2016 based on her concurrent receipt of food assistance benefits and based on her lack of Michigan residency. Respondent was not eligible for FAP benefits issued by the State of Michigan during any period she was issued food assistance benefits by the State of Virginia. BEM 222, p. 3. Additionally, clients are not eligible for FAP benefits if they do not reside in Michigan. BEM 220, p. 1. At the hearing, the Department presented sufficient documentation to establish that Respondent did not reside in Michigan and was not eligible for any FAP benefits issued by the Department during the fraud period. The Department further established that Respondent received food assistance benefits from two states for the months of December 2015 to May 2016.

Because Respondent was not eligible for any of the FAP benefits issued during the fraud period, the Department is entitled to recoup and/or collect \$ [REDACTED] from Respondent for overissued FAP benefits.

MA OI

The Department also alleges a MA overissuance during the MA 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, p. 5. A change in a client's MA case due to a change in residency requires timely notice. BAM 220 (April 2016 and July 2016) pp. 3-6. 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 a MA overissuance based on client error if an overissuance is established.

For a 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, 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 Respondent during this period (Exhibit A, pp. 71-73). The sum of these expenses is \$ [REDACTED]

Therefore, the Department is entitled to recoup and/or collect \$ [REDACTED] from Respondent for overissued 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. Respondent **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 \$2,752, less any amounts that have already been recouped and/or collected, for the period of December 7, 2015 to August 31, 2016; 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 of May 1, 2016 to August 31, 2016.

It is FURTHER ORDERED that Respondent be disqualified from the FAP for a period of **twelve months**.



LG/kl

Laura Gibson
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



Respondent via USPS

