



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 15, 2017
MAHS Docket No.: 17-009547
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 December 12, 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 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 benefits for 12 months?

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 21, 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 residency to the Department within 10 days.
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 FAP benefits is September 6, 2016, through June 30, 2017 (FAP fraud period) and September 1, 2016, through September 30, 2016, for MA benefits (MA 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 \$0 in such benefits during this time period.
8. During the MA fraud period, the Department contributed \$ [REDACTED] in funds to provide Respondent's MA benefits, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED] and MA benefits in the amount of \$ [REDACTED]
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), 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 (October 2016), pp. 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), 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 of his FAP and MA benefits because he failed to notify the Department that he no longer resided in Michigan but continued to receive and use Michigan-issued FAP and MA benefits while out of state. To be eligible for FAP and MA benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (January 2016), p. 1. For FAP purposes, a person is considered a resident while living in Michigan for purpose other than a vacation, even if he has no intent to remain in the State permanently or indefinitely. BEM 220, p. 1. For MA purposes, a Michigan resident is an individual who is living in Michigan except for a temporary absence. BEM 220, p. 2. Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished. BEM 220, p. 2. 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 (January 2016), p. 3.

The Department presented Respondent's FAP usage history to establish his residency. Respondent's FAP usage history shows that the majority of the transactions occurred in Ohio during the FAP and MA fraud periods. However, the usage history does not include June 2016, which is part of the FAP fraud period. The Department also presented a Lexis Nexis report which showed Respondent had addresses in the state of Ohio.

The Department presented applications submitted on September 3, 2016, and April 18, 2017. In both applications, Respondent indicated he was homeless and that his mailing address was in Ohio. The Department also presented case notes from September 8, 2016, which indicate Respondent stated he was homeless and that he travels between his sisters' residences. Respondent stated one of his sisters lived in Ohio and one lived in Michigan.

Although both applications were submitted after the fraud period begin date for both Respondent's MA and FAP benefits, there is no evidence that Respondent communicated false information to the Department. Respondent informed the

Department that he is homeless and spends his time between Ohio and Michigan. Respondent also indicated his mailing address was in Ohio. Respondent's transaction history accurately reflects those statements. It is therefore found, that the Department has failed to establish that Respondent intentionally withheld or misrepresented information for the purpose of maintaining 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 (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 FIP, FAP or SDA, 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. In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning his FAP or MA benefits. Accordingly, Respondent is not subject to a 12-month disqualification under the FAP or MA program.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

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.

In this case, the Department alleged a \$██████ FAP OI during the FAP fraud period, based on Respondent's lack of Michigan residency. As discussed above, a client must be a Michigan resident to be eligible for Michigan-issued FAP benefits. BEM 220, p. 1. The FAP transaction history shows that Respondent began using his FAP benefits in both Ohio in September 2016. From September 2016 to May 2017, Respondent used his FAP benefits almost exclusively in Ohio. Respondent occasionally returned to Michigan during this period, but only for a day or two. Respondent's minimal use in Michigan does not offset the other evidence of Respondent's Ohio residency. The LexisNexis report showed Respondent had multiple Ohio residences during the FAP fraud period. The LexisNexis report, coupled with Respondent's FAP benefit use mainly in Ohio, was sufficient to establish that Respondent was not residing in Michigan during the period of September 2016 through May 2017.

The Department included June 2017 in the FAP fraud period. However, the Department did not provide Respondent's FAP transaction history for June 2017. Therefore, the Department failed to establish Respondent was still residing in Ohio in June 2017, and

thus, was not entitled to benefits. The Department presented Respondent's Benefit Summary Inquiry, which showed Respondent received \$[REDACTED] in FAP benefits during the FAP fraud period. As the Department failed to establish Respondent was not entitled to FAP benefits in June 2017, the Department is not entitled to recoup the \$[REDACTED] in FAP benefits that Respondent received that month. Thus, the Department is entitled to recoup and/or collect \$[REDACTED] from Respondent for overissued FAP benefits for the period of September 2016 through May 2017.

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 and October 2016), 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. See BAM 220 (April 2016 and April 2017), pp. 3-6. Because the alleged MA overissuance was due to Respondent's failure to timely report his 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 MA fraud period. The sum of these expenses is \$[REDACTED]. Therefore, the Department is entitled to recoup and/or collect from Respondent an MA OI of \$[REDACTED] during the MA fraud period.

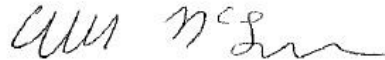
DECISION AND ORDER

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 concerning FAP or MA.
2. Respondent did receive an OI of FAP program benefits in the amount of \$[REDACTED] during the FAP fraud period.
3. The Department has established an OI of MA program benefits of \$[REDACTED] during the MA fraud period.

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; 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.



EM/

Ellen McLemore

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]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]