



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: December 8, 2017
MAHS Docket No.: 17-010174
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda Marler

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 22, 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) 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) of the FAP?
3. Should Respondent be disqualified from receiving benefits for the FAP?
4. Did Respondent receive an OI of Medical Assistance (MA) 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 27, 2017, to establish an OI of FAP and MA 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 due to Respondent's error.
4. Respondent **was informed** of the responsibility to report all changes including residency to the Department.
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 is May 1, 2016 through August 31, 2016 (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits and \$ [REDACTED] in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to no FAP or MA benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED] and an OI of \$ [REDACTED] in MA benefits.
9. This was Respondent's **first** alleged IPV.
10. 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).

Food Assistance Program (FAP)

The 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.

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), 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 (January 2016), p. 7; 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 concerning his FAP benefits because he intentionally failed to update his residency with the Department in order to receive FAP benefits from the State of Michigan while living in [REDACTED]. To be eligible for FAP benefits issued by the Department, a person must be a Michigan resident. BEM 220 (July 2014), p. 1. For FAP purposes, 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 thirty days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (July 2014), p. 3.

To support its allegations, the Department presented evidence of Respondent's original application for benefits dated January 28, 2016 at which time he provided a Michigan mailing address and was informed of the duty to report changes in his address within 10 days of the change itself. The Department provided a Benefit Summary Inquiry indicating that Respondent received benefits during the fraud period and a IG-311 EBT History showing that from April 15, 2016 until August 24, 2016, Respondent used his Michigan-issued FAP benefits exclusively in [REDACTED]. The Department also provided a WorkNumber report of Respondent's employment at [REDACTED], [REDACTED] from March 27, 2016 through October 16, 2016. Finally, the Department presented an Clear Report with an address that matches the address of Respondent provided by [REDACTED] on the WorkNumber report.

Based upon the evidence presented, it is clear that Respondent moved to [REDACTED]. However, to establish an IPV, the Department must establish that a client intentionally made a misleading statement or withheld facts. 7 CFR 273.16(c)(1). In this case, it is not clear that Respondent **intentionally** failed to report his move to [REDACTED]. There are any number of reasons why Respondent did not report his move including simply forgetting to report it. Therefore, the Department has not shown by clear and convincing evidence that Respondent committed an IPV.

FAP 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, 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.

As discussed above, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV. Therefore, Respondent is **not** subject to a disqualification from her receipt of FAP benefits on the basis of IPV.

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 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.

In this case, the Department alleged a \$ [REDACTED] FAP overissuance for May 1, 2016 through August 31, 2016 based upon 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 was using his FAP benefits exclusively in Georgia beginning April 15, 2016. Looking at the transaction history in combination with the WorkNumber report, the evidence presented is sufficient to establish that Respondent was not residing in Michigan during the fraud period. BEM 212, p. 3.

To determine the first month of the overissuance period the Department allows time for: (i) the client reporting period, per BAM 105; (ii) the full standard of promptness (SOP) for change processing, per BAM 220; and (iii) the full negative action suspense period; see BAM 220, Effective Date of Change. BAM 715 (January 2016), p. 4-5. Based on the above policy, the Department properly applied the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period to arrive at the OI beginning date of May 1, 2016. BAM 715, p. 5; BAM 720, p. 7.

The Benefit Issuance Summary presented by the Department showed that from May 1, 2016 through August 2016, Respondent received \$ [REDACTED] in FAP benefits (Exhibit A, p. 44). Since Respondent was not living in Michigan during the overissuance period, he was not eligible for any of the FAP benefits issued to him during this period.

Thus, the Department has met its burden of proof by a preponderance of the evidence and is entitled to recoup and/or collect \$ [REDACTED] from Respondent for overissued FAP benefits between May 1, 2016 and August 31, 2016.

Medical Assistance (MA) Overissuance

The 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.

In this case the Department seeks to recoup an alleged overissuance for medical benefits from the Respondent. As discussed above, the Department provided evidence that the Respondent was living and working in [REDACTED] from March 27, 2016 through October 16, 2016.

The Department initiates MA recoupment of an overissuance (OI) due to client error, not when due to agency error. BAM 710 (October 2015), p. 1. When the Department receives the amount of MA payments, it determines the OI amount. BAM 710, p. 1. For an OI due to any other reason other than unreported income or a change affecting need allowances, the OI amount is the amount of MA payments. BAM 710, p. 2.

The Department alleges that Respondent failed to notify the Department that he no longer resided in Michigan during the OI period but he continued to receive MA benefits through payment of his capitations while he was out-of-state. 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. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

For Medicaid cases, a Michigan resident is an individual who is living in Michigan except for a temporary absence. BEM 220 (January 2016), 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.

For SSI-Related MA, Group 2 Pregnant Women, Group 2 Persons Under Age 21, Group 2 Caretaker Relative, a person's absence is temporary if for the month being tested:

- His/her location is known; and
- There is a definite plan for him to return home; and
- He/she lived with the group before the absence (Note: newborns and unborns are considered to have lived with their mothers); and
- The absence did not last, or is not expected to last, the entire month being tested unless the absence is for education, training, or active duty in the uniformed services of the U.S.

BEM 211 (January 2016), p. 6.

As shown above, BEM 211 and BEM 220 state that 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. However, no evidence was presented that the absence was temporary. Therefore, Respondent failed to show how that his Michigan residency could have continued during the OI periods. Instead, the Department presented persuasive evidence showing that Respondent was not a Michigan resident during the OI periods. [Exhibit A, pp. 40-43, 46-60.] Therefore, Respondent was not eligible for MA benefits during the OI period and a MA OI is present. See BEM 211, pp. 6-7 and BEM 220, pp. 1-2.

In establishing the OI amount, BAM 710 states that for an OI due to any reason other than unreported income, the OI amount is the amount of MA payments. See BAM 710, p. 2. The Department presented a summary of the MA capitations paid for Respondent from May 6, 2016 through August 14, 2016 which totaled \$ [REDACTED] Exhibit A, pp. 62-63. The OI period begins the first day of the month **after** the month in which the standard reporting period **plus** the negative action period would have ended. BAM 710 (October 2015), p. 1. Therefore, the same 10-day reporting, 10-day standard of promptness, and the 12-day negative action period discussed above apply here as well and the Department properly determined the OI period to begin on May 1, 2016. A review of the Report of Capitation Payments indicates that payments were made from May 1, 2016 through August 14, 2016 totaling \$ [REDACTED]. Since the Respondent was not eligible for MA benefits based upon his residence, the Department has established an OI caused by Respondent's failure to report. The Department is entitled to recoup \$ [REDACTED] of MA benefits previously issued.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department **established** a MA benefit OI to Respondent totaling \$ [REDACTED].

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 **received** an OI of FAP benefits in the amount of \$ [REDACTED] from the FAP.
3. Respondent received an OI of MA benefits in the amount of \$ [REDACTED].

The Department is ORDERED to initiate the recoupment or collection of the FAP OI in the amount of \$ [REDACTED] for the period from May 1, 2016 through August 31, 2016 in accordance with Department policy.

The Department is ORDERED to reduce the MA OI to \$ [REDACTED] for the period May 1, 2016 through August 31, 2016, and initiate recoupment/collection procedures in accordance with Department policy.

It is FURTHER ORDERED that Respondent is not subject to a period of disqualification.



AM/kl

Amanda Marler
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

