



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 29, 2018
MAHS Docket No.: 17-005093
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Denise McNulty

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 3-way telephone hearing was held on October 17, 2017, from Detroit, Michigan and continued to October 19, 2017, where the hearing was completed. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent was present and represented herself.

ISSUES

1. Did Respondent receive an overissuance (OI) of FAP and 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 FAP benefits for 10 years?

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 April 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 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 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 is January 5, 2016, through November 30, 2016, (fraud period).
7. During the 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. During the 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.
10. The Department alleges that Respondent received an OI in MA benefits in the amount of \$ [REDACTED]
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 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.

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. 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 her FAP benefits because she received Michigan-issued FAP benefits during the same time she was issued FAP benefits in Alabama. Under Department policy, a person **cannot** receive FAP in more than one state for any month. BEM 222 (March 2013), p. 2. In support of its contention that Respondent committed an IPV, the Department presented an Michigan application submitted by Respondent on October 13, 2015, in which she acknowledged that she received the Information Booklet advising of “Things You Must Do” (which explained reporting a change in circumstances, including residency). In the application, Respondent also indicated that she was a Michigan resident.

The Department presented email correspondence with the Alabama Office of Client Services demonstrating Respondent applied for and received food assistance in Alabama from January 2016 through December 2016. Respondent provided an Alabama address as her permanent address for herself and two children. The Department testified that Respondent was receiving Michigan FAP benefits at the time she applied for food assistance benefits in Alabama. Respondent received benefits for a group size of three in both Michigan and Alabama during the fraud period.

The Department further presented a benefit issuance summary relating to Respondent’s Michigan issued FAP benefits which indicated that Respondent received Michigan issued FAP benefits from January 2016 through November 2016. Given that Respondent was receiving FAP benefits in Michigan at the time she submitted the Alabama application, and failed to report that information to the Alabama Department of Health and Human Services, it is found that the Department has established that Respondent intentionally misled the Department for the purpose of maintaining FAP program benefits. Additionally, the Department presented Respondent’s FAP transaction history showing she last used her Michigan issued benefits in Michigan on December 19, 2015. She used her Michigan issued FAP benefits exclusively in Alabama from January 14, 2016, through August 8, 2016.

As such the Department has established by clear and convincing evidence that Respondent committed an intentional program violation of her FAP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15 (January 2016). 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. 17.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720, p. 16. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV. Additionally, a 10-year disqualification for concurrent receipt of benefits will be found if fraudulent statements were made regarding identity or residency. BAM 720, p. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is subject to a 10-year disqualification under the FAP 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.

At the hearing, the Department established that the State of Michigan issued a total of \$ [REDACTED] in FAP benefits to Respondent during the fraud period. The Department alleges that Respondent was not entitled to any FAP benefits during this period. The Department also established that the State of Michigan issued a total of \$ [REDACTED] in MA benefits to Respondent during the fraud period and that Respondent was not entitled to any MA benefits during this period.

As previously stated, the Department also presented evidence from the State of Alabama which revealed that Respondent received food assistance benefits from January 2016 through August 2016. To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (January 2016), p. 1. For FAP and MA purposes, a person is considered a resident while living in Michigan for purpose other than a vacation, even if he/she 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 or MA benefits issued by the State of Michigan. BEM 212 (October 2015), p. 3.

The Department presented a benefits issuance summary which revealed that Respondent began using her Michigan issued FAP benefits in Alabama on January 14, 2016, and continued to do so until August 8, 2016. There was no evidence provided to show that Respondent returned to Michigan after she began using her FAP benefits out

of state. In January 2016, it was clear that Respondent had been residing outside the State of Michigan for more than 30 days. See BEM 212, p. 2. Therefore, the Department has established it is entitled to recoup the \$ [REDACTED] in FAP benefits and \$ [REDACTED] in MA benefits it issued to Respondent during the 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:

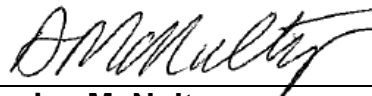
1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP benefits in the amount of \$ [REDACTED] during the fraud period.
3. Respondent **did** receive an OI of MA benefits in the amount of \$ [REDACTED] during the fraud period.

The Department is ORDERED to do the following in accordance with Department policy, to initiate recoupment and/or collection procedures for the FAP OI amount of \$ [REDACTED] less any amounts that have already been recouped and/or collected.

The Department is ORDERED to do the following in accordance with Department policy, to 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 subject to a 10-year disqualification from receipt of 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]