



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 17, 2018
MAHS Docket No.: 17-010670
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 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 September 27, 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 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 July 21, 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 his 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 Michigan issued FAP benefits exclusively outside of the State of Michigan beginning in November 12, 2016.
7. The OIG indicates that the time period it is considering the fraud period is January 1, 2017, through April 30, 2017, (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 also issued MA and FAP benefits from the State of Wisconsin.
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 when he received FAP benefits from the State of Michigan and used them exclusively in Wisconsin as of November 12, 2016. [Exhibit A, pp. 42-43.] The Department presented evidence that Petitioner was not a resident of Michigan after December 19, 2016, which was the date he applied for FAP and MA benefits in Wisconsin indicating he resided in that state. [Exhibit A, p. 51.] The Department further alleges that Respondent committed an IPV of his MA and FAP benefits by obtaining concurrent benefits in Wisconsin as of December 2016. [Exhibit A, pp. 51-56, 47-50.] 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) an application and a redetermination Respondent submitted to the Department in October 2015 and September 2016, in which Respondent acknowledged his responsibility to report any change in residence within 10 days, [Exhibit A, p. 19]; (ii) email communications with Wisconsin showing Respondent applied for and was granted FAP and MA benefits on December 29, 2016, [Exhibit A, pp. 47-50]; (iii) the Wisconsin application for MA and FAP benefits in showing Respondent denied receiving benefits from Michigan or any other state [Exhibit A, pp. 51-56]; (iv) a benefit summary inquiry showing that the Department issued FAP benefits to Respondent between January 2017 through April 2017, [Exhibit A, p. 73]; (v) the Electronic Benefit Transfer (EBT) history showing the use of Michigan-issued FAP benefits exclusively in Wisconsin during the fraud period, [Exhibit A, pp. 42-46]; and (vi) a medicaid capitation of payments for medical insurance for Respondent during the fraud period, [Exhibit A, pp. 74-75.]

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. Review of Respondent's Wisconsin application demonstrated he intentionally withheld or misrepresented information for the purpose of maintaining benefits and to obtain concurrent benefits. He denied receiving FAP benefits from another state at the time of the Wisconsin application, and with respect to MA benefits he denied receipt within the prior three months. [Exhibit A, pp. 53, 57.]

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 his FAP benefits and 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 10 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 (October 2015), p. 1.

As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV of his FAP benefits. Thus, Respondent is subject to a period of disqualification from receipt of FAP benefits on the basis of IPV. The Department established by clear and convincing evidence that Respondent committed an IPV by concurrent receipt of both FAP and MA benefits. Respondent is subject to a 10-year period of disqualification from receipt of FAP 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. 73.] 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 November 2016 to April 2017. 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 January 2017 to April 2017. 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. 73.] Because Respondent was not a Michigan resident during the fraud period, his household was not eligible for any of the FAP benefits issued to him during the fraud period.

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 his 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.

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 a MA capitation showing the total MA payments made by the Department on Respondent's behalf during the fraud period. [Exhibit A, pp. 74-75.] 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** 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 initiate recoupment/collection procedures in accordance with Department policy for a FAP OI in the amount of \$ [REDACTED] and the MA OI in the amount of \$ [REDACTED] less any amounts already recouped/collected.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of **10 years** due to **IPV by concurrent use** 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]
[REDACTED]

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