



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 25, 2018
MAHS Docket No.: 17-011868
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. 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 January 25, 2018, 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 the 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 the 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 26, 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 any changes in his circumstances 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 December 2015 through June 2016 (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP and \$ [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.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED] and an OI in MA benefits totaling \$ [REDACTED]
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 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).

Food Assistance Program (FAP)

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.

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 testified that Respondent committed an IPV concerning his FAP benefits because he had concurrent use of benefits in Michigan and Texas. However, no evidence of concurrent use was submitted. The hearing summary alleged that Respondent failed to report that he used his FAP benefits in Texas for a consecutive period. However, the use of FAP benefits outside of Michigan does not create ineligibility or rise to the level of an IPV for a client. Finally, the Investigative Report alleges that Respondent committed an IPV by using his FAP benefits while living in Texas. Again, living in Texas and using FAP benefits does not on its own rise to the level of an IPV. Individuals may temporarily live or visit other states and use their Michigan issued FAP benefits. Looking at all of the evidence and allegations made by the Department, it appears the Department was trying to assert that Respondent committed an IPV by failing to report a change in residency and continuing to use his Michigan issued FAP benefits while living in Texas.

To be eligible for FAP and MA 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 Redetermination from May 2015 and Application from July 2015 on which he affirmed his change reporting responsibilities and listed a Michigan address. The Department also provided a Benefit Summary Inquiry indicating that Respondent received benefits during the fraud period and a IG-311 EBT History showing that effective December 8, 2015, Respondent began using his Michigan issued FAP benefits exclusively in Texas. The use of Michigan issued FAP benefits in Texas continued until June 22, 2016. The Department also provided a screen shot of a portion of the Clear Report listing Respondent's addresses including the address from his Redetermination and Application used from May 2010 through April 2017, and the address used for mailing the hearing packet and notice of hearing in this case as of June 2017. The Clear Report also lists an address for Respondent in Fort Worth, Texas for May 2016 and Brooklyn, New York from May 2015 through January 2016.

Based upon the evidence presented, someone was using Respondent's FAP benefits in Texas, but that person was not necessarily Respondent. The Clear Report provided five potential addresses in three different states for Respondent during the alleged fraud period. The Department did not present any additional evidence to show that Respondent was the one using the FAP benefits in Texas such as Respondent's work

history, license plate and driver's license renewal or updates, or voting history. In addition, at the time of Redetermination and Application in 2015, all evidence suggests that he accurately identified his residency. Based upon the evidence presented, it is entirely possible the Respondent was the victim of identify theft. Without some other evidence, the Department has not met its burden of proof by clear and convincing evidence that Respondent committed an IPV by failing to report a change in residence and use of Michigan issued FAP benefits in Texas.

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 his receipt of FAP benefits on the basis of an IPV.

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 FAP OI in the amount of \$ [REDACTED] for December 2015 through May 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 someone was using Respondent's FAP benefits exclusively in Texas beginning December 8, 2015. However, the Clear Report shows five possible addresses for Respondent during the fraud period, three of which are in Michigan, and each overlaps with at least one other. If Respondent was a Michigan resident, he is eligible for benefits. As stated above, the use in Texas and potential residency in Texas and New York can be explained by someone stealing Respondent's identity. Without some additional proof of Respondent's residency, the Department has not shown that Respondent was ineligible for benefits or that he received an OI of FAP benefits.

Medical Assistance (MA) Overissuance

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.

In this case, the Department seeks to recoup an alleged OI for MA benefits totaling \$ [REDACTED] from the Respondent because of Respondent's alleged Texas residency.

The Department initiates MA recoupment of an overissuance (OI) due to client error, not when due to agency error. BAM 710 (July 2013), 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 continued to receive MA benefits through payment of his capitations. 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 (July 2014), 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 2015), p. 3. 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.

As discussed above, the Department did not meet its burden of proof in establishing Respondent's out-of-state residency for the OI period of December 2015 through June 2016. In addition, based upon the evidence presented, it is entirely possible that if the

Respondent was ever absent from Michigan, it was temporary, and he returned to Michigan based upon the accomplishment of the absence's purpose.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department has not met its burden of proof in establishing an MA OI.

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 not** receive an OI of FAP benefits in the amount of \$ [REDACTED] nor MA benefits in the amount of \$ [REDACTED]

The Department is ORDERED to delete the OI and cease any recoupment action.

It is FURTHER ORDERED that Respondent **is not subject** to a period of disqualification from the FAP program.



AM/

Amanda M. T. 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

DHHS

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

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