



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: January 18, 2018
MAHS Docket No.: 17-015559
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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 telephone hearing was held on January 18, 2018, from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG). The Respondent represented himself and was accompanied, ██████████ ██████████, mother/witness.

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 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 October 31, 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 address and residency.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. From February 20, 2017, through July 2017, Respondent was not a Michigan resident.
7. The Department's OIG indicates that the time period it is considering the fraud period is May 1, 2017, to July 31, 2017, (fraud period).
8. 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.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
10. This was Respondent's first alleged FAP IPV.
11. The Department alleges that during the fraud period, Respondent was issued \$ [REDACTED] in MA benefits by the State of Michigan; and Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
12. The Department alleges that during the fraud period Respondent received an OI in MA benefits in the amount of \$ [REDACTED]
13. 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), 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 requested the hearing, in part, to establish Respondent received an overissuance of benefits. The Department presented an unsigned Intentional Program Violation Repayment Agreement dated October 31, 2017. The document alleged Respondent received an overissuance of \$ [REDACTED] in FAP benefits from April 2017 through July 2017 and an overissuance of \$ [REDACTED] in MA benefits from May 1, 2017, through June 2017. The repayment agreement, along with Department testimony, alleged the OI was based on Respondent's non-Michigan residency.

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 (October 2015), p. 3. When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (January 2016), p. 1.

The Department presented an Electronic Benefit Transfer (EBT) card history showing Respondent's use of his Michigan-issued FAP benefits by date and location. [Exhibit A, pp. 72-75.] This evidence established that, beginning February 20, 2017, Respondent began using his FAP benefits out of state, exclusively in Indiana. While this evidence may be sufficient to establish that Respondent did not reside in Michigan and may not be eligible for FAP 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. See 7 CFR 273.16(e)(6); 7 CFR 273.16(c).

In support of its IPV case against Respondent, in addition to the transaction history showing Respondent's out-of-state use of FAP benefits, the Department presented the application dated December 7, 2016, in which Respondent acknowledged his responsibility to report changes in address, residence and employment within 10 days of the change. Further, the Department submitted a Notice of Case Action and a Health Care Coverage Determination Notice demonstrating Respondent was repeatedly notified of his responsibility to report changes in 10 days of the change in address, employment and income. [Exhibit A, pp. 45, 49.] However, there was no evidence that Respondent submitted any documentation to the Department alleging a Michigan address during the period he was residing in Indiana.

The Department presented an employment application showing Respondent changed his address from Michigan to Indiana. [Exhibit A, pp. 57-63.] The worknumber report, presented by the Department, demonstrated that Respondent was employed and worked regular hours with an Indiana employer during the fraud period. A letter from the employer, presented by the Department, showed Respondent did not begin employment until March 20, 2017. Use of his FAP benefits, in Indiana, began on February 20, 2017. Respondent's assertion that he did not use his FAP benefits in Indiana because someone at a relative's home may have taken his EBT card, does not ring true. Respondent claimed to have been homeless in Michigan so he went to Indiana and was living with the family member, and never used his EBT card himself, nor gave anyone else permission to use it is not credible. He was in Indiana more than a month before he received a paycheck and his EBT card was used regularly during that same time period.

The Department presented a medical capitation demonstrating Respondent used his MA benefits in Indiana during the fraud period. [Exhibit A, pp. 52-54.] There was no evidence presented showing Respondent intended to return to Michigan after a short stay in Indiana. All of the evidence shows Respondent established residency in Indiana with the intention of remaining there.

Under the above discussed circumstances, the Department has not established that Respondent committed an IPV concerning his FAP case.

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.

As discussed above, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV. Thus, Respondent is subject to a disqualification from her receipt of FAP benefits on the basis of 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. In this case, the Department alleges that Respondent received an OI of both FAP and MA benefits.

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; BAM 715 (October 2015), p. 6; BAM 705 (October 2015), p. 6.

In this case, the Department alleged an OI in the amount of \$█ in FAP benefits during the 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 (October 2015), p. 1. The FAP transaction history showing Respondent's use of his FAP benefits entirely out of state from late February 2017 through July 2017; and Respondent's employment in Indiana, was sufficient to establish that Respondent was not residing in Michigan during the FAP fraud period. BEM 212 (October 2015), p. 3.

In consideration of out-of-state use that began February 20, 2017, and taking into account the 10-day reporting period, the 10-day processing period, and the 12-day negative action period, the FAP OI period properly began April 1, 2017. BAM 720 (October 2015), p. 7. The benefit summary inquiry presented by the Department showed that during the fraud period, Respondent received \$█ in FAP benefits. [Exhibit A, p. 51.] Because Respondent was not living in Michigan during the fraud period, his household was not eligible for any of the FAP benefits issued during the fraud period.

Thus, the Department is entitled to recoup and/or collect \$█ from Respondent for overissued FAP benefits from April 1, 2017, through July 31, 2017.

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 an expenditure summary and medical capitation showing the total MA payments made by the Department on Respondent's behalf during the fraud period, which included services and premiums. [(Exhibit A, pp. 52-54)]. The sum of these expenses is \$ [REDACTED]

Therefore, the Department is entitled to recoup and/or collect \$ [REDACTED] from Respondent for an MA OI from May 1, 2017, through June 30, 2017.

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] for the period beginning April 1, 2017, through July 31, 2017.
3. The Department has established an OI of MA benefits in the amount of \$ [REDACTED] for the period beginning May 1, 2017, through June 30, 2017.

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, for the period beginning May 1, 2017, to July 31, 2017; 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, for the period beginning May 1, 2017, to June 30, 2017.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of **12 months** due to the first IPV.



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]

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