



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: February 22, 2018
MAHS Docket No.: 17-015820
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 Regulations, particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on February 15, 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 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 of 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 November 7, 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 FAP benefits.
3. Respondent was a recipient of FAP and MA benefits issued by the Department.
4. On the assistance Redetermination submitted to the Department by Respondent on March 30, 2015, Respondent acknowledged his responsibility to report changes in his circumstances 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 FAP benefits outside of the State of Michigan beginning in September 2015.
7. The OIG indicates that the time periods they are considering the fraud period are September 2015 through March 2016 for FAP and September 2015 for MA.
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 issued Supplemental Nutritional Assistance Program (SNAP) benefits from the State of Florida from September 2015 through January 2016.
10. This was Respondent's **second** 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).

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 (October 2017), 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 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 and received concurrent FAP benefits in Michigan and Florida. 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 30 days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (July 2014), p. 3. A person cannot receive FAP in more than one state for any month. BEM 222 (July 2013), p. 3. A person commits an IPV if he/she is found by administrative hearing process to have made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (July 2013), p. 1.

To support its allegations, the Department presented evidence of Respondent's Redetermination submitted to the Department on March 30, 2015, wherein 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 Michigan issued FAP benefits from September 2015 through March 2016 and a IG-311 EBT History showing that from September 7, 2015 through April 8, 2016, Respondent used his Michigan-issued FAP benefits exclusively in Florida. The Department also provided a Clear Report showing Respondent's most recent address as being in Florida and as having utilities connected under his name on September 8, 2015; November 1, 2015; June 16, 2017; and July 24, 2017. Finally, the Department presented an email from the Florida equivalent of the Department of Health and Human Services indicating that Respondent received food assistance benefits through the Supplemental Nutrition Assistance Program (SNAP) in Florida from September 2015 through January 2016.

Based upon the evidence presented, it is clear that Respondent moved to Florida. However, the evidence does not establish that Respondent made a fraudulent statement or representation in order to receive food assistance benefits in more than one state. The only statements by Respondent which were provided for the hearing occurred in March 2015, approximately six months before he moved to Florida. Therefore, no IPV can be found as a result of concurrent receipt of benefits.

To establish an IPV based upon a failure to report a change in residency, the Department must establish that a client intentionally made a misleading statement or

withheld facts. 7 CFR 273.16(c)(1). In this case, due to the proximity in time of the Respondent's application for benefits and his move to Florida, the length of time in which he continued to collect Michigan benefits while living in Florida, and the receipt of concurrent benefits from both Michigan and Florida, the Respondent intentionally withheld information from the Department in order to continue receiving benefits. Therefore, the Department has shown by clear and convincing evidence that Respondent committed an IPV by failing to report the change in residency.

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 10 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 established by clear and convincing evidence that Respondent committed an IPV for failure to report his change in residency. This is Respondent's second IPV. Therefore, Respondent is subject to a 24-month disqualification from receipt of FAP benefits on the basis of an IPV resulting from a failure to report his change in residency.

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 September 2015 through March 2016 based upon Respondent's lack of Michigan residency and concurrent receipt of benefits. Respondent was not eligible for FAP benefits issued by the State of Michigan during any period he received food assistance benefits issued by the State of Florida. He also was not eligible for benefits for any period in which he was not a Michigan resident. As discussed above, Respondent was eligible for food assistance benefits from the State of Michigan only if he was residing in Michigan. BEM 222, p. 3; BEM 220, p. 1. The evidence shows that Respondent was using his FAP benefits outside of the State of Michigan, that he was living outside of Michigan, and that he was receiving benefits from the State of Florida. Looking at all of the evidence, the Department has shown that Respondent received benefits to which he was not entitled.

The Department properly determined the OI period to begin as of the time Respondent began receiving concurrent benefits in September 2015. BEM 222, p. 3. In addition,

the Department properly continued the OI period through March 2016 due to his lack of Michigan residency. The Benefit Summary Inquiry presented by the Department showed that from September 2015 through March 2016, Respondent received \$ [REDACTED] in FAP benefits. Respondent was not eligible for any benefits issued 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 September 2015 and March 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 MA benefits from the Respondent. As discussed above, the Department provided evidence that the Respondent was living and receiving FAP benefits in Florida.

The Department initiates MA recoupment of an overissuance (OI) due to client error, not when due to agency error. BAM 710 (October 2016), 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. 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, 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 Supplemental Security Income (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), pp. 3-4.

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. In this case, 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 as discussed above. 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, in September of 2015 which totaled \$ [REDACTED]

To determine the first month of the overissuance period the Department allows time for: (i) the 10-day client reporting period, per BAM 105; (ii) the 10-day full standard of promptness (SOP) for change processing, per BAM 220; and (iii) the 12-day full negative action suspense period; see BAM 220, Effective Date of Change. BAM 715, p. 4-5. In this case, the first piece of evidence that Respondent was living in Florida and not Michigan was his use of Michigan-issued FAP benefits in Florida on September 7, 2015 and his connection of utilities under his name on September 8, 2015. In reviewing the policies and evidence, the Department did not properly apply the OI beginning date and it should start November 1, 2015. Since the Respondent was not receiving MA benefits in November 2015 or thereafter, there is no OI for MA benefits.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department has not established a MA benefit OI 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, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **received** an OI of FAP benefits in the amount of \$ [REDACTED]
3. Respondent **did not received** an OI of MA benefits in the amount of \$ [REDACTED]

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

The Department is ORDERED initiate recoupment/**collection** procedures for the FAP OI amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for 24-months.



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]
[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
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[REDACTED]
[REDACTED]