



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 26, 2018
MAHS Docket No.: 17-013441
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 March 22, 2018, from Detroit, Michigan. The Department was represented by [REDACTED] 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/or Medical Assistance (MA) program 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 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 August 31, 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 FAP benefits outside of the State of Michigan beginning in March 17, 2016.
7. The OIG indicates that the time periods they are considering the fraud period are February 2016 through August 2016 for the FAP and March 2016 through August 2016 for the MA program (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 issued Supplemental Nutritional Assistance Program (SNAP) benefits beginning February 2016 and MA benefits beginning September 21, 2015, from the State of Ohio.
10. The Department alleges that Respondent was not eligible for \$ [REDACTED] in FAP and/or MA benefits.
11. This was Respondent's **first** alleged IPV.
12. The first notice of hearing was returned undeliverable; a new address was located and a new notice of hearing was mailed to Respondent at the updated address; it **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

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:

- FAP trafficking OIs 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 her or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits her 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 alleges that Respondent committed an IPV because he received FAP and MA benefits from the State of Michigan at the same time he received food assistance and MA benefits from the State of Ohio. Furthermore, he received these benefits from the State of Michigan when he was no longer a Michigan resident. 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 his/her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (October 2015), p. 1.

In support of its IPV allegations, the Department presented (i) a Michigan application submitted by Respondent to the Department on February 2, 2016, in which he provided a Michigan address as his home address and acknowledged the responsibility to update the Department with a change in residency (Exhibit A, pp. 13-41); (ii) email correspondence from a Department OIG agent and representative from the Ohio equivalent of the Department of Health and Human Services regarding Respondent's receipt of SNAP beginning February 2016 and MA benefits beginning September 2015 in Ohio (Exhibit A, pp. 42-43); (iii) Respondent's Ohio SNAP transaction history; (iv) Respondent's Ohio application for SNAP and MA benefits dated September 21, 2015; (v) a Michigan FAP transaction history showing that Respondent used his Michigan-issued food benefits in Ohio between March 17, 2016, and August 13, 2016 (Exhibit A, pp. 11-12); (vi) a benefit summary inquiry showing benefits issued to Respondent from Michigan from February 2016 through August 2016 (Exhibit A, p. 64); and (vii) a note confirming Respondent's rental of a basement apartment in Toledo, Ohio, obtained from the Ohio Department counterpart (Exhibit A, p. 58).

The evidence presented establishes that Respondent applied for Michigan-issued FAP benefits on February 2, 2016, while he was receiving benefits from Ohio. At the time Respondent applied for FAP in Michigan, he alleged a Michigan address (Exhibit A, pp. 25-26) but also alleged to Ohio that he had an Ohio address. Beginning March 17, 2016, Respondent used his Michigan FAP benefits exclusively in Ohio until August of 2016. (Exhibit A, pp. 11-12) This evidence, coupled with the Ohio application, receipt of Ohio benefits, and confirmation of rent in Ohio was sufficient to establish that Respondent failed to update his address with the Department as required in order to

continue receiving FAP benefits from Michigan even though he was already receiving benefits from Ohio.

Thus, the Department established by clear and convincing evidence that Respondent committed an IPV of FAP benefits based on concurrent receipt of benefits and a failure to update the Department with her new address.

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 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 established by clear and convincing evidence that Respondent committed an IPV through concurrent receipt of the FAP benefits from Michigan and Ohio. Accordingly, he is subject to a 10-year disqualification from receipt of FAP benefits. It should be noted that if the Respondent had not received concurrent benefits, but only made the misrepresentation about his residence, he would have been disqualified for one year as a result of his first 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 \$ [REDACTED] overissuance during the fraud period based on Respondent's concurrent receipt of benefits and receipt of benefits without Michigan residency. 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 Ohio. BEM 222, p. 3. Further, Respondent was eligible for food assistance benefits from the State of Michigan only if he was residing in Michigan. BEM 220, p. 1.

The benefit summary issuance presented by the Department showed that during the fraud period, Respondent received \$ [REDACTED] in FAP benefits (Exhibit A, p. 64). As discussed above, Respondent received dual benefits from the State of Michigan and State of Ohio between February 2016 and August 2016. Based on his Ohio Application for benefits and Michigan-issued FAP benefits usage history, Respondent was not living in Michigan. Respondent was not eligible as a result of concurrent receipt of benefits and a lack of Michigan residency beginning February 2016. Therefore, he was not eligible for any of the FAP benefits issued during the fraud period.

Thus, the Department is entitled to recoup and/or collect \$ [REDACTED] from Respondent for overissued FAP benefits between February 2016 and August 2016.

Medical Assistance

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.

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 in Ohio from at least September 2015.

The Department initiates MA recoupment of an overissuance (OI) due to client error, not when due to agency error. BAM 710 (October 2015), 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 he continued to receive MA benefits through payment of his capitations while he was out of state. 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/her 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 2016), p. 6.

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. However, in this case, no evidence was presented that the absence was temporary, and all evidence suggests that Respondent continued to live in Ohio. Therefore, Respondent failed to show 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. In addition, Respondent was already in receipt of Ohio-issued MA benefits and was not entitled to receipt of concurrent benefits from Ohio and Michigan. Therefore, Respondent was not eligible for MA benefits during the OI period and an MA OI is present. BEM 211, pp. 6-7; 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 from March 2016 through August 2016 which totaled \$ [REDACTED]. The OI period begins the first day of the month **after** the month in which the standard reporting period **plus** the negative action period would have ended as discussed above in the FAP OI section. Therefore, the same 10-day reporting, 10-day standard of promptness, and the 12-day negative action period discussed above apply here as well. Based upon the evidence presented, the Department properly began the OI period in March 2018 as no evidence was presented of earlier receipt of MA benefits in Michigan. Since the Respondent was not eligible for MA benefits based upon his residence, the Department has established an OI caused by Respondent's failure to report his move to Ohio. The Department is entitled to recoup \$ [REDACTED] of MA benefits previously issued.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department **established** a MA benefit OI to Respondent 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 **received** an OI of MA benefits in the amount of \$ [REDACTED]

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

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for 10 years.



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]

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