



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 30, 2018
MAHS Docket No.: 18-000711
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 April 26, 2018, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent was self-represented.

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 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 January 25, 2018, 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 benefits issued by the Department.
4. Respondent **was** aware of the responsibility to report changes in circumstances to the Department within 10 days of the change itself.
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 February 2016 for the FAP program and December 2015 through August 2016 for the MA program (fraud period).
7. 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.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
9. 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.
10. The Department alleges that Respondent received an OI in MA benefits in the amount of \$ [REDACTED]
11. This was Respondent's **first** alleged IPV.
12. 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 (October 2017), pp. 5, 12-13; ASM 165 (August 2016).

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), pp. 7-8; 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 in order to receive FAP benefits from the State of Michigan while living in Massachusetts. 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/she 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.

To support its allegations, the Department presented evidence of Respondent's original application for benefits dated September 1, 2015, at which time he provided a Michigan home and mailing address, and acknowledged his duty to report changes in his circumstances within 10 days of the change itself. The Department provided a Benefit Summary Inquiry indicating that Respondent received benefits during the fraud period. It also presented an IG-311 Electronic Benefit Transfer (EBT) History showing that from February 8, 2016, through March 5, 2016, Respondent used his Michigan-issued FAP benefits exclusively in Massachusetts. The Department also provided a WorkNumber report of Respondent's employment at [REDACTED], Incorporated beginning October 21, 2015, and showing that Respondent provided a Massachusetts address to the employer.

Respondent admits that he moved to Massachusetts as of October 2015. In addition, Respondent provided for the hearing a letter that he says he mailed to the Department alerting them to his change in address; however, the letter is addressed to [REDACTED] and not to the Department of Health and Human Services. Respondent also indicated that he attempted to call and leave a message for the Department in mid-October but was never able to speak to anyone and did not receive any call back. Respondent did not receive any follow up from the Department regarding his cases until July 27, 2016, when the Department issued a Notice of Case Action indicating his FAP benefits were closed effective March 1, 2016.

After reviewing the evidence, it appears that Respondent genuinely believed he had informed the Department about his move even though his letter was addressed to [REDACTED] and not the Department. In addition, Respondent testified that he had called the Department and left a message regarding his move, but did not receive a call back. Despite all of this, Respondent used his Michigan issued FAP benefits in Massachusetts in February and March 2016. He admits to the use of the FAP benefits

and is willing to repay the value of FAP benefits. Respondent's willingness to repay the FAP benefits suggests that he knew that he was not supposed to use his FAP benefits after he moved to Massachusetts.

To establish an IPV, the Department must establish that a client intentionally made a misleading statement or withheld facts. 7 CFR 273.16(c)(1). In this case, the client believed he had informed the Department of his change in residence. But even after his attempt to notify the Department, he continued to receive FAP benefits and continued to use them. At that point, since Respondent knew that he should not be using the benefits from Michigan if he was not living in Michigan, he needed to contact the Department again to let the Department know he had moved or that he was still receiving benefits. Therefore, the Department has shown by clear and convincing evidence that Respondent committed an IPV.

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. Therefore, Respondent is subject to a 12-month disqualification from receipt of FAP benefits on the basis of this being his first IPV.

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 OI for December 2015 through February 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. Respondent willingly agreed under oath that he moved to Massachusetts in October 2015. Therefore, Respondent was not a Michigan resident during the fraud period.

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

(January 2016), pp. 4-5. Based on the above policy, the Department properly began the OI period in December 2015. BAM 715, p. 5; BAM 720, p. 7.

The Benefit Issuance Summary presented by the Department showed that from December 2015 through February 2016, Respondent received \$ [REDACTED] in FAP benefits (Exhibit A, p. 56). Since Respondent was not living in Michigan during the overissuance period, he was not eligible for any of the FAP benefits issued to him during this period.

Thus, the Department has met its burden of proof by a preponderance of the evidence that an OI existed; however, the Department has over-estimated the value of the OI. Since the OI is limited by the reporting time outlined above and to the amount the client actually received minus the amount the client was eligible to receive, the value of the OI is \$ [REDACTED] BAM 720, p. 8; BAM 715, p. 6; BAM 705, p. 6. In its calculations, the Department appears to have improperly added the benefit issuances from September 2015 through February 2016 instead of the benefit issuances from December 2015 through February 2016 as it originally requested.

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 totaling \$ [REDACTED]. As discussed above, the Department provided evidence and Respondent admits he was living and working in Massachusetts as of October 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 and his son's capitations (premiums) after he left the 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. Respondent admits that his absence from Michigan was not temporary and he was no longer a Michigan resident as of October 2015. Therefore, Respondent was not eligible for MA benefits during the fraud period, and an MA OI is present. BEM 211, pp. 6-7; BEM 220, pp. 1-2.

While in this case, Respondent testified that he had mailed a letter to the Department alerting the Department to his move, the letter is addressed to [REDACTED] not the Department. It is not enough to notify insurance carriers when enrolled in MA programs, the Department must be notified. Respondent was made aware of this requirement on his application for benefits dated September 1, 2015.

Despite the letter, Respondent also testified that he had called and left a voicemail with the Department to alert them to his move in mid-October 2015. Respondent never heard back from the Department nor did he receive any mail from them. The Department has no record of any contact or communications with Respondent. Given that Respondent also testified that he sent the letter to the Department, but in reality, it was addressed to [REDACTED], it would appear in the case of the phone call, he actually called [REDACTED] and not the Department. Respondent confused the Department with his insurance providers. Therefore, there is a client error OI during the fraud period.

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 and detailed report of the MA capitations paid for Respondent and his son from December 2015 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; once again, the Department properly began the OI period in December 2015. 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 change in residency. The Department is entitled to recoup \$[REDACTED] for MA benefits previously issued.

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 **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 reduce the FAP OI to \$ [REDACTED] for the period December 2015 through February 2016, and initiate recoupment/collection procedures in accordance with Department policy.

The Department is ORDERED to initiate recoupment or collection actions from Respondent for the MA OI totaling \$ [REDACTED] for the period December 2015 through August 2016 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from the FAP for a period of **12 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]
[REDACTED]
[REDACTED]
[REDACTED]