



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: July 10, 2018
MAHS Docket No.: 18-000847
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 July 9, 2018, from Detroit, Michigan. The Department was represented by Stephanie Avery, 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) 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 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 31, 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 and that she could receive food assistance benefits in only one state at a time.
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 October 2016 through January 2017 (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits and \$ [REDACTED] in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. During the same period, Respondent received food and medical assistance benefits from the State of Georgia.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED] and an OI in MA benefits in the amount of \$ [REDACTED].
10. This was Respondent's **first** 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), 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.

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 (January 2018), p. 8; 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 alleges that Respondent committed an IPV of the FAP because she received concurrent benefits in Michigan and Georgia and failed to update her residency with the Department. A client is required to report changes in circumstances, including residency, within 10 days of the change itself. BAM 105 (July 2015), pp. 10-11. To be eligible for FAP benefits issued by the Department, a person must be a Michigan resident. BEM 220 (January 2016), 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 (October 2015), p. 2. In addition, a person cannot receive FAP benefits in more than one state for any month. BEM 222 (July 2013), p. 2. 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.

Respondent submitted a Redetermination to the Department on February 17, 2016, acknowledging her rights and responsibilities as a FAP and MA program recipient. At the time of the Redetermination, Respondent was living in Michigan. In March of 2016, Respondent visited Georgia and North Carolina but returned to Michigan within the week as shown by her IG-311 Electronic Benefit Transfer (EBT) history. However, Respondent began exclusive use of her FAP EBT benefits in Georgia effective August 19, 2016. She continued to use her Michigan-issued FAP benefits exclusively in Georgia until the benefits were essentially exhausted on February 24, 2017. The OIG contacted the State of Georgia based upon Respondent's EBT history and discovered that Respondent had been receiving Georgia-issued Supplemental Nutrition Assistance Program (SNAP) benefits, the FAP equivalent in Georgia, since October 17, 2016. Respondent was also receiving Medicaid or MA benefits from Georgia beginning September 1, 2016. Respondent indicated that she attempted to contact her case worker from Michigan, but she did not elaborate when she contacted the case worker, through what method she attempted to reach her case worker, or why she attempted to reach her case worker. Respondent made the choice not to present any additional evidence during the hearing. The Department has no record of Respondent ever informing the Department of her change in residency or receipt of benefits in another state.

Based upon the evidence presented, it is clear that Respondent received benefits in both states. However, no evidence was presented that Respondent made a fraudulent statement or representation in Michigan regarding her identity or residence in order to receive food assistance benefits in multiple states. Therefore, there is no IPV based upon duplicate receipt of benefits. BEM 203, p. 1. But in reviewing the evidence, it is clear that Respondent was using both her Michigan and Georgia benefits at the same time in Georgia. Furthermore, Respondent says she attempted to contact her case worker, presumably to notify the case worker of her move, but continued to use her Michigan issued FAP benefits in Georgia until they were exhausted. Even if Respondent was not able to speak with her case worker, she still had an obligation to inform the Department by letter, fax, or phone call of the change in her circumstances. Furthermore, Respondent should have stopped using her Michigan-issued FAP benefits. Therefore, given the considerable time period of overlapping use between Michigan and Georgia, the Department has met its burden of proof by clear and convincing evidence that Respondent committed an IPV by failing to report changes in circumstances.

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 but has not shown by clear and convincing evidence that Respondent made a fraudulent statement or misrepresentation of her identity or residence. Thus, the 10-year disqualification is not applicable. Since this is Respondent's first IPV, she is subject to a 12-month disqualification from receipt of FAP benefits.

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 (October 2015), p. 6; BAM 705 (January 2016), p. 6.

In this case, the Department alleged a \$ [REDACTED] OI for the FAP and an \$ [REDACTED] OI for the MA program during the fraud period based on Respondent's concurrent receipt of benefits and receipt of benefits without Michigan residency from October 2016 through January 2017. Respondent was not eligible for FAP benefits issued by the State of Michigan during any period that she received food assistance benefits issued by the State of Georgia. BEM 222, p. 3. Likewise, Respondent was eligible for food assistance benefits from the State of Michigan only if she was residing in Michigan. BEM 220, p. 1. The above rules also apply to the MA program. BEM 222, p. 2; BEM 220, p. 1.

The Benefit Summary Inquiry presented by the Department showed that during the fraud period, Respondent received \$ [REDACTED] in total FAP benefits. (Exhibit A, p. 24.) All benefits issued during this period were issued while Respondent was receiving Georgia-issued SNAP benefits, and Respondent was using her Michigan-issued benefits in Georgia. Since Respondent was receiving dual benefits; and because she was not a Michigan resident, she was not eligible to receive any of these benefits. The Department has established an OI of the FAP program in the amount of \$ [REDACTED] for the period from October 2016 through January 2017.

The Expenditure Summary and Report of Capitation Payments for Respondent verifies that Respondent received \$ [REDACTED] in MA benefits from the State of Michigan from October 2016 through January 2017. As shown above, Respondent was living in and receiving MA benefits from Georgia during the same period. Therefore, the Department has established an OI of MA benefits in the amount of \$ [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, 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] from the FAP.
3. Respondent **received** an OI of MA benefits in the amount of \$ [REDACTED] from the MA program.

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 disqualified from FAP for a period of **12 months**.



AMTM/

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) 763-0155; 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

Latasha McKinney-Newell
MDHHS-Wayne-19-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

██████████
████████████████████
██████ MI ██████

M Shumaker
Policy Recoupment
A M T Marler
MAHS