RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[redacted]
[redacted]
[redacted] MS [redacted]

Date Mailed: July 27, 2018
MAHS Docket No.: 18-001489
Agency No.: 122916227
Petitioner: OIG
Respondent: [redacted]

ADMINISTRATIVE LAW JUDGE: John Markey

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 and 42 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16 and 42 CFR 431.230(b). After due notice, a telephone hearing was held on July 19, 2018, from Lansing, Michigan. The Department was represented by Martin O'Sullivan, Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e). During the hearing, 68 pages of documents were offered and admitted as Department's Exhibit A, pages 1-68.

ISSUES

1. Did Respondent receive an overissuance (OI) of Medical Assistance (MA) and Food Assistance Program (FAP) 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 FAP benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On July 6, 2016, Respondent applied for assistance from the Department, including MA and FAP benefits. Exhibit A, page 10.

2. On the application, Respondent indicated that she lived at an address in [redacted] Michigan. Exhibit A, page 12.

3. On the application, Respondent acknowledged her duty to report a change in circumstance affecting her eligibility for benefits, including a change in address. Exhibit A, pages 20-21.

4. The application further informed Respondent that if she intentionally failed to report a change and received benefits to which she was not entitled, she could be disqualified from the programs and have to pay back any benefits wrongfully received. Exhibit A, pages 20-21.

5. Sometime in the fall of 2016, Respondent moved to Mississippi.

6. From August 20, 2016, through December 24, 2016, Respondent's EBT card was used exclusively at locations in Mississipi. Exhibit A, pages 39-40.

7. On October 7, 2016, Respondent registered a vehicle in the State of Mississippi. Exhibit A, page 63.

8. The Department issued Respondent $194 in FAP benefits in December of 2016. Exhibit A, page 66.

9. The Department issued Respondent $765.97 in MA benefits in December of 2016. Exhibit A, pages 67-68.

10. The Department's OIG filed a hearing request on February 16, 2018, to establish an OI of FAP and MA benefits received by Respondent when she was not a Michigan resident in December of 2016. Exhibit A, page 1.

11. The OIG considered Respondent's failure to report her move to Mississippi an IPV and requested that Respondent be disqualified from receiving FAP benefits for a period of 12 months. Exhibit A, page 1.

12. The Department is seeking to recoup only those MA and FAP benefits issued in December of 2016 totaling $959.97.

13. Respondent did not have an apparent physical or mental impairment that would limit her understanding or ability to fulfill her reporting responsibilities.

14. This was Respondent's first alleged IPV.

15. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services 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.

Overissuance

Only residents of Michigan are eligible to receive benefits from the Department. BEM 220 (January 1, 2016), page 1. When an ineligible client is issued benefits or an eligible client is issued more benefits than the client is entitled, the Department must attempt to recoup the OI. BAM 700 (January 1, 2016), page 1.

In this case, the Department showed by clear and convincing evidence that Respondent was a Mississippi resident as of October of 2016, at the latest. Thus, Respondent was no longer a Michigan resident and was ineligible to receive benefits. However, because of Respondent's failure to report her move to Mississippi, the Department issued her MA of $765.97 and FAP benefits of $194 in December of 2016. As Respondent was ineligible to receive those benefits, they are considered an OI.

Intentional Program Violation

The Department's policy in effect at the time of Respondent's alleged IPV defined an IPV as an overissuance in which the following three conditions exist: (1) the client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination; (2) the client was clearly and correctly instructed regarding his or her reporting responsibilities; and (3) the client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill his or her reporting responsibilities. BAM 720 (January 1, 2016) page 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; see also 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence which is so clear, direct, weighty, and convincing that it enables a firm belief as to the truth of the allegations sought to be established. *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (citing *In re Jobes*, 108 NJ 394 (1987)).

In this case, the Department has met its burden. Respondent was required to report changes in her circumstances to the Department within 10 days of the date of the change. BAM 105 (April 1, 2016), pages 11-12. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent failed to report that she moved out of state within 10 days of the date she moved. Respondent's failure to report this change to the Department must be considered an intentional misrepresentation to maintain her FAP benefits since Respondent knew or should have known that she was required to report the change to the Department and that reporting the change to the Department would have caused the Department to stop issuing her FAP benefits. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her reporting requirement.

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, pages 15-16. In general, clients are disqualified for standards disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, page 16.

In this case, there is no evidence that Respondent has ever been found to have committed an IPV related to FAP benefits. Thus, this is Respondent's first IPV related to FAP benefits. Therefore, Respondent is subject to a one-year disqualification from receiving FAP benefits.

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. Respondent received an overissuance of FAP benefits in the amount of $194 that the Department is entitled to recoup and/or collect.

2. The Department paid an overissuance of MA benefits in the amount of $765.97 that the Department is entitled to recoup and/or collect.
3. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to her FAP benefits.

4. Respondent is subject to a one-year disqualification from receiving FAP benefits.

IT IS ORDERED that the Department may initiate recoupment and/or collection procedures for the total overissuance amount of $959.97 established in this matter less any amounts already recouped or collected.

IT IS FURTHER ORDERED that Respondent shall be disqualified from receiving FAP benefits for a period of one year.

JM/dh

John Markey
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

Jeanenne Broadnax
25637 Ecorse Rd.
Taylor, MI 48180

Wayne County (District 18), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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