



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
TX

Date Mailed: July 16, 2018
MAHS Docket No.: 18-003683
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

**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 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 12, 2018, from Lansing, Michigan. The Department was represented by Daniel Marchetti, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

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 June 13, 2016, Respondent applied for assistance from the Department, including FAP benefits. Exhibit A, p. 12.
2. In the application Respondent submitted on June 13, 2016, the Department instructed Respondent to report all changes which could affect his eligibility for

assistance to the Department within 10 days of the date of the change. Exhibit A, p. 24.

3. On June 15, 2016, the Department issued a Notice of Case Action to Respondent which advised him that he had been approved for FAP benefits. The Notice also instructed Respondent to report changes. Exhibit A, p. 42-44.
4. Respondent did not have any physical or mental impairment which would have limited his understanding or his ability to fulfill his reporting requirement.
5. On January 18, 2017, Respondent began using his FAP benefits exclusively in Texas. Exhibit A, p. 47-54.
6. On February 1, 2017, Respondent moved to Texas. Respondent applied for food assistance benefits from the State of Texas in February 2017.
7. On February 18, 2017, Respondent began working at Kroger in Texas. Respondent reported to his employer that his address was in Texas. Exhibit A, p. 56-57.
8. The State of Texas issued food assistance benefits to Respondent in February 2017 and March 2017. Exhibit A, p. 55.
9. The Department also issued FAP benefits to Respondent in February 2017 and March 2017. The Department issued Respondent a total of \$388.00 in FAP benefits for February 2017 and March 2017. Exhibit A, p. 59.
10. Respondent did not report to the Department that he had moved to Texas or that he was receiving food assistance from Texas.
11. Respondent continued to use his FAP benefits during the time he was receiving food assistance benefits from Texas. Exhibit A, p. 48-50.
12. The Department expended \$912.55 for Respondent's MA from February 2017 through March 2017.
13. The Department conducted an investigation of Respondent's case and determined that Respondent received benefits from the Department and the State of Texas concurrently. The Department determined that it overissued \$388.00 in FAP benefits to Respondent from February 2017 through March 2017.
14. On April 11, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.

15. The OIG requested Respondent be disqualified from receiving FAP benefits for 10 years for an IPV involving the concurrent receipt of benefits. The OIG requested recoupment of \$388.00 in FAP benefits and \$912.55 in MA benefits for benefits issued in February 2017 and March 2017.
16. A notice of hearing was mailed to Respondent at his last known address and 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), 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

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (October 1, 2016), p.1. When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1.

Only a resident of Michigan is eligible for assistance from the Department. BEM 220 (January 1, 2016), p. 1. An individual cannot receive FAP benefits from more than one state for the same month. BEM 222 (October 1, 2016), p. 3.

Here, Respondent received FAP benefits from more than one state for the months of February 2017 and March 2017. The FAP benefits issued to Respondent for those two months must be considered an overissuance because an individual cannot receive FAP benefits from more than one state for the same month. Respondent received a total of \$388.00 in FAP benefits for those months, so that is the amount of his FAP benefits overissuance.

However, Respondent did not receive an overissuance of MA benefits. The Department requested a recoupment of an overissuance of MA benefits for February 2017 and March 2017, but April 2017 was the earliest month that the Department could have implemented a negative action on Respondent's MA benefits.

An individual is required to report changes in his circumstances which could affect his eligibility for benefits to the Department within 10 days of the date of the change. BAM 105 (October 1, 2016), p. 11. Once a change is reported, the Department has 15 days to take action on all benefits other than FAP benefits (which the Department only has 10 days to take action on). BAM 220 (January 1, 2017), p. 7. The action cannot be effective until at least 12 days after the date of the action. BAM 220, p. 12.

Respondent moved to Texas on February 1, 2017, so Respondent should have reported his move to the Department by February 11, 2017. If Respondent would have reported his move, then the Department would have had to take action on his MA benefits within 15 days and issue a negative action with an effective date no earlier than 12 days from the date of the action. Thus, the first month that the change in Respondent's residence could have affected his MA benefits would have been April 2017 (taking into account the 10, 15, and 12-day requirements).

Intentional Program Violation

An IPV involving the concurrent receipt of benefits exists when the client made a fraudulent statement or representation regarding his identity or residence in order to receive multiple benefits simultaneously. BEM 203 (October 1, 2015), 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 (January 1, 2016), 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, I find that the Department has met its burden. Respondent claimed and received food assistance benefits from the Department and the State of Texas for February 2017 and March 2017. Respondent failed to report either that he had moved or that he was receiving benefits from the State of Texas. Respondent's failure to report this change to the Department must be considered an intentional misrepresentation to obtain FAP benefits from more than one state for the same month. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his 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, p. 16. Clients are disqualified

for ten years for a FAP IPV involving concurrent receipt of benefits. 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.

In this case, Respondent committed an IPV involving the concurrent receipt of benefits because Respondent claimed and received FAP benefits from the Department and the State of Texas concurrently. Therefore, Respondent is subject to a ten-year disqualification for an IPV involving the concurrent receipt of benefits.

DECISION AND ORDER

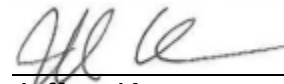
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent did not receive an overissuance of MA, but Respondent received an overissuance of \$388.00 in FAP benefits that the Department is entitled to recoup.
2. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.
3. Respondent should be disqualified from receiving FAP benefits.

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$388.00 in FAP benefits in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall be disqualified from FAP benefits for a period of 10 years.

JK/hr



Jeffrey Kemm
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

Denise McCoggle
27260 Plymouth Rd
Redford, MI
48239

Wayne 15 County DHHS- via electronic
mail

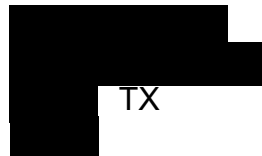
MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
PO Box 30062
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Respondent

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