



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: June 22, 2018
MAHS Docket No.: 17-016959
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 June 13, 2018, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent 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 (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 benefits for Food Assistance (FAP)?
4. Did Respondent receive an overissuance (OI) of Medical Assistance (MA) benefits that the Department is entitled to recoup?

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 December 20, 2017, 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 including change of residence and employment and income changes.
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 January 1, 2017 through January 31, 2017 (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. The Department also alleges that Respondent received an OI in Medical Assistance benefits in the amount of [REDACTED] that the Department is entitled to recoup due to Petitioner no longer residing in Michigan.
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 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. .

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 (January 2017), p. 12-13.

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), p. 7; 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 seeks an Intentional Program Violation (IPV) alleging that Respondent failed to report to the Department when she moved to Tennessee to advise the Department that she no longer resided in Michigan. The Department presented an application completed by the Respondent on February 22, 2016 to demonstrate that she was advised of her reporting responsibilities when receiving benefits. Exhibit A, pp. 12-43. In addition, the Department presented evidence that the Respondent began employment in Tennessee with employer [REDACTED], on October 23, 2016, which listed her address on the Work Number with this employer as [REDACTED], Nashville, Tennessee. Exhibit A, p. 48. See also Clear Report with the Tennessee address and utility listing at the address on October 7, 2016. Exhibit A, p. 52. The Respondent received her first pay check from the employer on October 28, 2016. Exhibit A, p. 49. In addition, the Department presented evidence that Respondent registered her vehicle in Tennessee to the [REDACTED] address on December 1, 2016. Exhibit A, p. 54. Thereafter, the Respondent began to receive food assistance benefits from the State of Tennessee beginning February 25, 2017.

The Department also presented an IG 311 which documented that the Respondent used her Michigan FAP benefits exclusively in Tennessee beginning September 11, 2016 through December 22, 2017 and January 11, 2017 through January 31, 2017 and thus established that Respondent had used her benefits out of state for more than 30 days and was no longer eligible for Michigan FAP benefits. Exhibit A, pp. 43-47.

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 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 thirty days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (October 2015), p. 3.

In this case the evidence established that the Respondent began employment in Tennessee on October 23, 2018 and did not report the employment or her change in residence to Tennessee to the Department at any time. Department policy requires that Respondent report changes and provides:

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change.

Income reporting requirements are limited to the following:

- Earned income:
 - Starting or stopping employment.
 - Changing employers.
 - Change in rate of pay.
 - Change in work hours of more than five hours per week that is expected to continue for more than one month.

Other changes must be reported within 10 days after the client is aware of them. These include, but are **not** limited to, changes in:

- Persons in the home.
- Marital status.
- Address and shelter cost changes that result from the move.
- Vehicles.
- Assets.
- Child support expenses paid.
- Health or hospital coverage and premiums.
- Child care needs or providers. BAM 105, (January 2018),p. 12.

The Department OIG interviewed Respondent February 18, 2017 who advised the OIG that she was unaware that she was required to report relocating to Tennessee. Exhibit A,p. 4. However, notwithstanding this statement, it is clear based upon her application filed on February 22, 2016 that she was advised of her responsibility to report changes and never reported her income or her employment in Tennessee or that she had moved and thus continued to receive Michigan FAP benefits when she was no longer eligible. Exhibit A, p. 12-48. A further review of the application also indicates that Respondent

had just lost her employment and reported that employment and income on the application based upon her pay check. Exhibit A, p. 22.

Based upon the evidence presented it is determined that the Department did establish an IPV by clear and convincing evidence based upon the Respondent's use of her Michigan FAP benefits out of state in Tennessee beginning in September 2016 and never reporting her income from employment or the fact that she was no longer residing in Michigan.

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 ten 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 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. Thus, Respondent is subject to a one year disqualification from receipt of FAP benefits on the basis of IPV.

Overissuance

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 during the FAP fraud period based on Respondent's lack of Michigan residency and beginning employment and receiving her first paycheck on October 28, 2016 as well as continual out of state use of her FAP benefits in Tennessee beginning September 2016 based upon the FAP transaction history IG 311. As discussed above, a client must be a Michigan resident to be eligible for Michigan-issued FAP benefits. BEM 220, p. 1. The evidence did establish that that Respondent was not residing in Michigan during the FAP fraud period. January 1, 2017 through January 31, 2017.

The benefit summary inquiry presented by the Department showed that during the fraud periods, Respondent received [REDACTED] during the fraud period in FAP benefits. Exhibit A, p. 56. To determine the first month of the overissuance period (for overissuances 11/97 or later) Bridges allows time for:

- The client reporting period, per BAM 105. (10 days)
- The full standard of promptness (SOP) for change processing, per BAM 220. (10 days)

- The full negative action suspense period; see BAM 220, Effective Date of Change. BAM 714 (October 2017), p. 5. (12 days)

Based upon Department policy the Department correctly started the OI period on January 1, 2017 having correctly applied the required number of days until the OI can begin.

Thus, the Department is entitled to recoup and/or collect a FAP OI of [REDACTED] for the January 2017 FAP benefits.

Medical Assistance Overissuance

To be eligible for MA benefits (Medicaid) a person must be a Michigan resident. In this case the evidence established that the Respondent was not temporarily absent from the State of Michigan, and did not establish that she intended to remain in Michigan permanently or indefinitely. For MA a resident is defined as an individual who is living in Michigan except for a temporary absence. 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, (January 2016), p. 2. The Respondent never returned to Michigan for any sufficient time after September 11, 2016 and also obtained employment in Tennessee and thus the Department absent any evidence to the contrary did establish that Respondent was no longer a Michigan resident. In addition, the Department established that the Respondent failed to report her change in residency and thus has established that the overissuance was based upon client error which occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the Department. BAM 700 (January 2018), p. 7.

In this case the OI was due to failure to report by Respondent that she was no longer a Michigan resident and thus the OI amount is the amount of the MA payments made by the State of Michigan on Respondent's MA groups' behalf. BAM 710 (January 2018, p.2. In support of the OI amount being sought to be established, the Department presented the MA Expenditure Summary for Petitioner and her four minor children for the month beginning January 1, 2017 through January 31, 2017 which totaled [REDACTED] in capitation costs incurred by the State of Michigan on their behalf. Exhibit A, pp. 57-58. A review of the OI begin date of January 1, 2017 based upon the 10/10/12 rule is determined to be correct based upon Respondent's receipt of income from employment starting October 28, 2016.

Based upon the evidence presented the Department has established an MA overissuance that the Department is entitled to recoup/collect in the amount of [REDACTED].

DECISION AND ORDER

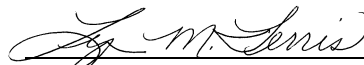
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of program benefits in the amount of [REDACTED] from the following program(s) Food Assistance.
3. The Respondent **did** receive an OI of program benefits in the amount of [REDACTED] from the Medical Assistance program.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of [REDACTED] for the FAP and MA overissuances setforth in paragraphs 2 and 3 above in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from receiving Food Assistance for a period of **12 months**.

LF/cg



Lynn M. Ferris

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

Via Email:

MDHHS-Wayne-17-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]