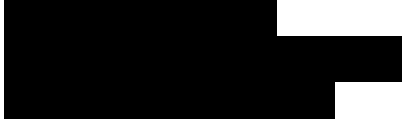




RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: March 15, 2018
MAHS Docket No.: 18-000232
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 March 14, 2018, from Detroit, Michigan. The Department was represented by Julie Brda, 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 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 FAP benefits for ten years?

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 2, 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 and Respondent's son were recipients of FAP and MA benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in residency to the Department within 10 days.
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 for FAP benefits is March 1, 2016 through January 31, 2017 (FAP fraud period) and October 1, 2016 through January 31, 2017 for MA benefits (MA fraud period).
7. During the FAP fraud period, Respondent was issued \$3,927 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. During the MA fraud period, the Department contributed \$2,161.28 in funds to provide Respondent's MA benefits, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$3,927 and MA benefits in the amount of \$2,161.28.
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), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services 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:

- FAP trafficking OIs 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 2016), pp. 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 (January 2016), p. 6; 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 her FAP benefits because she received Michigan-issued FAP benefits at the same time she was issued FAP benefits in [REDACTED]. Under Department policy, a person **cannot** receive FAP benefits in more than one state for any month. BEM 222 (March 2016), p. 2. Additionally, the Department alleges that Respondent committed an IPV of her FAP and MA benefits because she failed to notify the Department that she no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out of state. To be eligible for FAP benefits issued by the Department, an individual 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 purpose other than a vacation, even if he has no intent to remain in the State permanently or indefinitely. BEM 220, p. 1. For MA purposes, 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. 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 (January 2016), p. 3.

In support of its contention that Respondent committed an IPV, the Department presented an application submitted by Respondent on [REDACTED], 2015, in which she acknowledged that she received the Information Booklet advising of “Things You Must Do” (which explained reporting change circumstances, including residency). The Department also presented a redetermination submitted by Respondent on March 28, 2015. In the redetermination, Respondent indicated there were no changes in her circumstances, including her residency.

The Department presented correspondence from the State of [REDACTED] which revealed that Respondent received food assistance benefits in [REDACTED] beginning February 24, 2016 and continued to receive benefits throughout the fraud period. The Department

further presented a benefit issuance summary relating to Respondent's Michigan issued FAP benefits which indicated that Respondent received Michigan issued FAP benefits during the fraud period. Additionally, the Department provided Respondent's usage history which demonstrated that Respondent used her Michigan issued FAP benefits exclusively in ██████ beginning August 2016 and continuing throughout the fraud period.

The evidence presented establishes that for the period of February 2016 through January 2017, Respondent received Michigan-issued FAP benefits, and during the same period, received food assistance benefits issued by the State of ██████. Thus, the Department established by clear and convincing evidence that Respondent committed an IPV of FAP benefits based on concurrent receipt of benefits.

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 where the client made fraudulent statement regarding identity or residency, 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 through concurrent receipt food assistance benefits from two states at the same time. In order to apply the ten-year disqualification for concurrent receipt of benefits, the Department must establish that the client made fraudulent statements regarding identity or residency. BAM 720, p. 16. In this case, the Department presented a redetermination submitted by Respondent during the fraud period. Respondent clearly indicated that she was still residing in Michigan but was receiving food assistance benefits in the State of ██████. Accordingly, Respondent is subject to a ten-year disqualification.

Overissuance

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.

FAP OI

At the hearing, the Department established that the State of Michigan issued a total of \$3,927 in FAP benefits to Respondent during the fraud period. The Department alleges that Respondent was eligible for \$0 in FAP benefits during this period.

As previously stated, the Department presented evidence from the State ██████ which revealed that Respondent received FAP benefits from March 2016 through January 2017. The Department also presented the benefits issuance summary, which revealed that Respondent received Michigan FAP benefits during the same months. Respondent was not eligible for FAP benefits issued by the State of Michigan during any period she was issued food assistance benefits by the State of ██████. BEM 222, p. 3. The evidence provided at the hearing clearly demonstrates that Respondent simultaneously received benefits from Michigan and ██████ during the fraud period. Therefore, the Department has established it is entitled to recoup the \$3,927 in FAP benefits it issued to Respondent during the fraud period.

MA OI

The Department also alleges a MA overissuance during the MA fraud period due to client error. The Department's right to seek an MA OI is only available if the OI is due to client error or IPV, not when due to agency error. BAM 710 (October 2015 and October 2016), p. 1. A client error OI occurs when the client received more benefits than entitled to because the client gave incorrect or incomplete information to the Department. BAM 700, p. 5. A change in a client's MA case due to a change in residency requires timely notice. See BAM 220 (April 2016 and April 2017), pp. 3-6. Because the alleged MA overissuance was due to Respondent's failure to timely report her change in residency, the MA OI resulted from client error. Therefore, the Department could seek a recoupment of a MA overissuance based on client error if an overissuance is established.

For a MA OI due to any reason other than unreported income or a change affecting the need allowances, the MA OI amount is the amount of the MA payments. BAM 710, p. 2. In this case, the Department presented an expenditure summary showing the total MA payments made by the Department on Respondent and Respondent's son's behalf during the MA fraud period. The sum of these expenses is \$2,161.28. Therefore, the Department is entitled to recoup and/or collect from Respondent a MA OI of \$2,161.28 during the MA fraud period.

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:

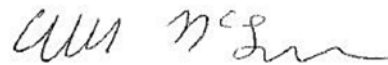
1. The Department has established by clear and convincing evidence that Respondent committed an IPV concerning FAP.
2. Respondent did receive an OI of FAP program benefits in the amount of \$3,927 during the FAP fraud period.
3. The Department has established an OI of MA program benefits of \$2,161.28 during the MA fraud period.

The Department is ORDERED to do the following in accordance with Department policy:

1. initiate recoupment and/or collection procedures for the FAP OI amount of \$3,927, less any amounts that have already been recouped and/or collected; and
2. initiate recoupment and/or collection procedures for the MA OI amount of \$2,161.28, less any amounts that have already been recouped and/or collected.

It is FURTHER ORDERED that Respondent is subject to a ten-year disqualification from FAP benefits.

EM/cg



Ellen McLemore

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

Via Email:

MDHHS-Wayne-17-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

