



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: September 20, 2018
MAHS Docket No.: 18-003637
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 Regulations, particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on August 23, 2018 from Lansing, Michigan.

The Department was represented by Craig Curtiss of the Office of Inspector General (OIG). Mr. Curtiss testified on behalf of the Department. The Department submitted 71 exhibits which were admitted into evidence.

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). The record was closed at the conclusion of the hearing.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent receive an OI of Medicaid benefits that the Department is entitled to recoup?
3. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
4. Should Respondent be disqualified from receiving FAP benefits for 12 months?

FINDINGS OF FACT

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

1. The Department's OIG filed a hearing request on April 11, 2018, to establish an overissuance of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. [Dept. Exh. 1].
2. The OIG has requested that Respondent be disqualified from receiving FAP program benefits for 12 months. [Dept. Exh. 1, 4].
3. Respondent was a recipient of FAP and MA program benefits issued by the Department. [Dept. Exh. 1, 4].
4. Respondent was aware of the responsibility to report a change of address within 10 days. [Dept. Exh. 27].
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. [Dept. Exh. 17-18].
6. The Department's OIG indicates that the time period it is considering the fraud period is March 1, 2017 through June 30, 2017. [Dept. Exh. 4].
7. On June 6, 2017, the Department received a fax from the [REDACTED] [REDACTED] indicating Respondent's son last attended the school on January 16, 2017, and his official withdrawal date was January 20, 2017. [Dept. Exh. 48].
8. On January 23, 2017, Respondent submitted a request to the [REDACTED] [REDACTED] to send copies of her son's school records to a school in [REDACTED], Ohio. [Dept. Exh. 49].
9. During the fraud period, Respondent was issued \$1,428.00 in FAP benefits by the State of Michigan and received \$3,324.26 in MA benefits to which Respondent was not entitled. [Dept. Exh. 50-53].
10. The Department alleges that Respondent received an overissuance in FAP benefits in the amount of \$1,428.00 and \$3,324.26 in MA program benefits. [Dept. Exh. 4].
11. This was Respondent's first alleged FAP IPV. [Dept. Exh. 4].
12. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office 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, 2017, the Department's Office of Inspector General requests Intentional Program Violation hearings for the following cases:

1. FAP trafficking overissuances that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or Food Assistance Program trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA) and Food Assistance Program (FAP) programs combined is \$500 or more, or
 - the total amount is less than \$500, and
 - the group has a previous Intentional Program Violation, or
 - the alleged Intentional Program Violation involves Food Assistance Program 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, pp 12-13 (10/1/2017).

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 720, p 1 (emphasis in original).

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 Respondent intentionally failed to report that she moved to Ohio and was receiving FAP and MA benefits from Michigan. Respondent's signature on the FAP application dated August 11, 2016, certifies that she was aware that fraudulent participation in FAP and MA could result in criminal, civil or administrative claims. Because of Respondent's failure to report that she was living in Ohio, she received an overissuance and the Department is entitled to recoup the \$1,428.00 in FAP benefits and \$3,324.26 in MA benefits.

Disqualification

A client who is found to have committed an Intentional Program Violation by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p 16. Clients are disqualified for ten years for a Food Assistance Program Intentional Program Violation involving concurrent receipt of benefits, and, for all other Intentional Program Violation cases involving Family Independence Program, Food Assistance Program or State Disability Assistance, for standard disqualification periods of one year for the first Intentional Program Violation, two years for the second Intentional Program Violation, and lifetime for the third Intentional Program Violation or conviction of two felonies for

the use, possession, or distribution of controlled substances in separate periods if both offenses occurred after August 22, 1996. BEM 203, p 2; BAM 720, p 16. A disqualified member may continue as the grantee **only if** there is no other eligible adult in the group. BAM 720, p 17 (emphasis in original).

In this case, Respondent is disqualified from the FAP program for 12 months.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2018).

In this case, Respondent received a FAP overissuance of \$1,428.00 and a \$3,324.26 MA program benefit overissuance based on her failure to timely report her move to Ohio.

DECISION AND ORDER


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

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of FAP benefits in the amount of \$1,428.00.
3. Respondent did receive and overissuance of MA program benefits in the amount of \$3,324.26.

The Department is ORDERED to initiate recoupment procedures for the FAP amount of \$1,428.00 and the MA program benefits amount of \$3,324.26 in accordance with Department policy.

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

VLA/nr



Vicki Armstrong
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

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Tuscola County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

DHHS

Rolando Gomez
1365 Cleaver Road
Caro, MI
48723

Respondent

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