



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
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Date Mailed: August 27, 2018
MAHS Docket No.: 18-005259
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

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 August 22, 2018, from Lansing, Michigan. The Department was represented by Martin O'Sullivan, Lead 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 November 10, 2014, the Department issued a Redetermination to Respondent to obtain information from Respondent to review his eligibility for assistance. The Redetermination instructed Respondent to complete a form, sign it, and return it. Above the signature, the Department included the following: "I understand I can view the DHS Publication 1010, Important Things About Programs & Services, at <http://www.michigan.gov/documents/dhs/DHS-PUB-1010...>" Exhibit A, p. 10-15.

2. On March 21, 2015, Respondent began using his FAP benefits to complete EBT transactions exclusively in Virginia. Exhibit A, p. 19-25.
3. On April 6, 2015, Respondent began employment in Virginia, and Respondent reported to his employer that his residence was in Virginia. Exhibit A, p. 16-18.
4. Respondent did not report to the Department that he had moved to Virginia.
5. The Department issued Respondent \$1,164.00 in FAP benefits from June 2015 through September 2015. The Department also provided health care coverage (MA) for Respondent at a cost of \$1,292.00 for the months of June 2015 through September 2015. Exhibit A, p. 26-28.
6. The Department conducted an investigation of Respondent's case and determined that Respondent had moved out of state without reporting it to the Department.
7. Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his duties to the Department.
8. On April 30, 2018, the Department's OIG filed a hearing request to establish that Respondent committed an IPV and to establish that Respondent received an overissuance of FAP benefits and MA that the Department is entitled to recoup.
9. The OIG requested Respondent be disqualified from receiving FAP benefits for 12 months for a first IPV. The OIG requested the establishment of an overissuance of \$1,292.00 in MA and \$1,164.00 in FAP benefits.
10. A notice of hearing was mailed to Respondent at his last known address and 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 (May 1, 2014), 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. In this case, Respondent received more benefits than he was entitled to receive. Only a Michigan resident is eligible to receive MA and FAP benefits from the Department. BEM 220 (July 1, 2014), p. 1. Since Respondent was not a Michigan resident when he received MA and FAP benefits from June 2015 through September 2015, Respondent was not entitled to the benefits he received. Thus, the \$1,292.00 in MA and \$1,164.00 in FAP benefits issued to Respondent was an overissuance.

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, and (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 their reporting responsibilities. BAM 720 (October 1, 2014) 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; 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 not met its burden. As cited above, an essential element of an IPV is that "the client was clearly and correctly instructed regarding his or her reporting responsibilities." The Department has the burden to prove this element. That means the Department must present proof to establish by clear and convincing evidence that the Respondent was clearly and correctly instructed regarding his reporting responsibilities. The Department has not done so in this case.

The Department asserted that it proved that Respondent was clearly and correctly instructed regarding his reporting responsibilities because Respondent completed the

Department's November 10, 2014, Redetermination, signed it, and returned it to the Department. The Redetermination does not contain the Respondent's reporting responsibilities, and it does not even contain an acknowledgment of his reporting responsibilities. At best, the Redetermination contains instructions on how Respondent might be able to find his reporting responsibilities if he reads DHS Publication 1010, Important Things About Programs & Services, by visiting the web address provided by the Department. Providing a document such as the Department's November 10, 2014, Redetermination which refers to another document which allegedly contains reporting responsibilities does not establish that the Respondent was clearly and correctly instructed.

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. 15-16. Here, there is no finding that Respondent committed an IPV, so Respondent is not disqualified from receiving program 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 \$1,292.00 in MA and \$1,164.00 in FAP benefits that the Department is entitled to recoup.
2. The Department has not established, by clear and convincing evidence, that Respondent committed an IPV.
3. Respondent should not be disqualified from receiving FAP benefits.

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$1,292.00 in MA and \$1,164.00 in FAP benefits in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall not be disqualified from receiving FAP benefits.

JK/nr



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

[REDACTED]
MI