



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 13, 2018
MAHS Docket No.: 18-005766
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 September 12, 2018, from Lansing, Michigan. The Department was represented by Kelli Owens, 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 [REDACTED], 2016, Respondent applied for assistance from the Department, including MA and FAP benefits. Exhibit A, p. 11-41.

2. The application Respondent submitted to the Department on [REDACTED], 2016, contained instructions to report changes in address to the Department within 10 days of the date of the change. Exhibit A, p. 24.
3. Respondent did not have any physical or mental impairment which would have limited her understanding or her ability to fulfill her reporting requirement.
4. On August 31, 2016, Respondent began using her EBT card to complete transactions outside of Michigan. Thereafter, all of Respondent's EBT transactions were outside of Michigan. Exhibit A, p. 42-49.
5. On October 27, 2016, Respondent began employment at Excel in Ohio. Respondent reported to Excel that her residential address was in Ohio. Exhibit A, p. 50-52.
6. Respondent did not report a change in address to the Department.
7. The Department continued to issue MA and FAP benefits to Respondent through January 31, 2017. The Department issued Respondent MA at a cost of \$1,604.24 for coverage from November 1, 2016 through January 31, 2017. The Department issued Respondent \$582.00 in FAP benefits from November 1, 2016, through January 31, 2017. Exhibit A, p. 53-55.
8. The Department conducted an investigation of Respondent's case and determined that it overissued MA and FAP benefits to Respondent because she had an unreported change in residence.
9. On June 1, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
10. The OIG requested Respondent be disqualified from receiving FAP benefits for 12 months for a first IPV. The OIG requested recoupment of \$1,604.24 in MA and \$582.00 in FAP benefits issued from November 1, 2016, through January 31, 2017.
11. A notice of hearing was mailed to Respondent at her 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 Supplemental Nutrition Assistance Program (SNAP) is a federal food assistance program designed to promote general welfare and to safeguard well-being by increasing food purchasing power. 7 USC 2011 and 7 CFR 271.1. The Department administers its Food Assistance Program (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 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 (January 1, 2018), 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 she was entitled to receive. Only a Michigan resident is eligible to receive benefits from the Department. BEM 220 (April 1, 2018), p. 1. A resident is a person who is living in Michigan except for a temporary absence. BEM 220, p. 1-2.

The Department presented sufficient evidence to establish that Respondent was not a Michigan resident when she received benefits from November 2016 through January 2017. Respondent moved and started employment in another state in October 2016, so Respondent was no longer living in Michigan. Respondent did not present any evidence to establish that her absence from Michigan was temporary. Thus, Respondent was not a resident because she was not living in Michigan except for a temporary absence.

Since Respondent was not a Michigan resident when she received MA and FAP benefits from November 2016 through January 2017, Respondent was not entitled to the benefits she received. Thus, the \$1,604.24 in MA and \$582.00 in FAP benefits issued to Respondent from November 2016 through January 2017 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 (January 1, 2016) 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 met its burden. Respondent was required to report changes in her circumstances to the Department within 10 days of the date of the change. BAM 105 (April 1, 2016), p. 11-12. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent failed to report that she moved out of state within 10 days of the date she moved. Respondent's failure to report this change to the Department must be considered an intentional misrepresentation to maintain her benefits since Respondent knew or should have known that she was required to report the change to the Department and that reporting the change to the Department would have caused the Department to stop issuing her benefits. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her 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. 15-16. In general, clients are disqualified 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.

In this case, there is no evidence that Respondent has ever been found to have committed an IPV related to FAP benefits. Thus, this is Respondent's first IPV related to FAP benefits. Therefore, Respondent is subject to a one-year disqualification.

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:

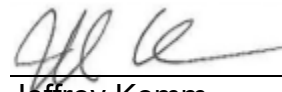
1. Respondent received an overissuance of \$1,604.24 in MA and \$582.00 in FAP benefits that the Department is entitled to recoup.

2. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.
3. Respondent should be disqualified from FAP for one year.

IT IS ORDERED THAT the Department may initiate recoupment procedures for \$1,604.24 in MA and \$582.00 in FAP benefits in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall be disqualified from FAP for a period of one year.

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

LaClair Winbush
8655 Greenfield
Detroit, MI
48228

Wayne 31 County DHHS- via electronic
mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

[REDACTED]
MI