



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

J [REDACTED]  
[REDACTED]  
[REDACTED] CA [REDACTED]

Date Mailed: October 16, 2018  
MAHS Docket No.: 18-007067  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED] [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 October 11, 2018, from Lansing, Michigan. The Department was represented by Thomas Lilienthal, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] [REDACTED] appeared and represented herself.

**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 FAP?

**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] 8, 2016, Respondent applied for assistance from the Department, including MA and FAP. Respondent asserted that her home was in Michigan. The Department instructed Respondent to report all changes which could affect her eligibility for benefits to the Department within 10 days of the date of the change, including changes in address. Exhibit A, p. 12-44.

2. In February 2017, Respondent travelled to California, obtained employment, and decided to stay in California. Respondent applied for MA from California, and California granted Respondent MA effective February 1, 2017.
3. In June 2017, Respondent applied for FAP benefits from California, and California granted Respondent FAP effective June 2017. Exhibit A, p. 45.
4. Respondent did not report to the Department that her address had changed, that she obtained employment in California, or that she had applied for assistance from California. Respondent did not report to California that she was receiving MA and FAP from Michigan.
5. The Department issued Respondent MA and FAP from February 2017 through June 2017. Exhibit A, p. 54-56.
6. The Department investigated Respondent's case and determined that she was overissued MA and FAP benefits because she continued to receive benefits after she changed her residency.
7. On June 7, 2017, the Department interviewed Respondent, and Respondent asserted that she moved in February 2017.
8. On June 29, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV. Exhibit A, p. 1.
9. The OIG requested Respondent be disqualified from receiving FAP benefits for 10 years for an IPV involving the concurrent receipt of benefits. The OIG requested recoupment of \$2,601.30 in MA benefits and \$1,071.00 in FAP benefits.

### **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 (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.

Only a resident of Michigan is eligible for assistance from the Department. BEM 220 (April 1, 2018), p. 1. An individual cannot receive FAP benefits from more than one state for the same month. BEM 222 (October 1, 2016), p. 3.

Here, Respondent was overissued MA from February 2017 through June 2017 because Respondent was not eligible for MA from the Department since Respondent was not a resident of Michigan. Respondent ceased being a resident of Michigan when she moved to California in February 2017 and decided to stay in California. Once Respondent ceased being a resident of Michigan, Respondent was ineligible for MA from the Department. Thus, Respondent was not entitled to the MA benefits the Department issued her from February 2017 through June 2017. The Department presented sufficient evidence to establish that it overissued \$2,601.30 in MA benefits to Respondent.

Respondent was also overissued FAP from April 2017 through June 2017 because Respondent was not eligible for FAP from the Department since Respondent was not a resident of Michigan. The Department presented sufficient evidence to establish that it overissued \$1,071.00 in FAP benefits to Respondent.

### **Intentional Program Violation**

The Department argued that Respondent committed an Intentional Program Violation (IPV) by misrepresenting her residence in order to obtain FAP benefits simultaneously from Michigan and California and that Respondent should be disqualified from FAP for 10 years as a result.

An IPV involving the concurrent receipt of benefits exists when the client made a fraudulent statement or representation regarding his identity or residence in order to receive multiple benefits simultaneously. BEM 203 (May 1, 2018), 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 (October 1, 2017), 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 misrepresented her residence to the Department when she failed to report her change in address after she moved to California. The Department had advised Respondent to report changes in her address to the Department, so Respondent knew or should have known that she was supposed to report the change to the Department. The Department continued to issue FAP benefits to Respondent because she did not report her change in address. Respondent then claimed and received FAP benefits from California while she was receiving benefits from the Department. Respondent received FAP benefits from both the Department and California concurrently for June 2017. Respondent did not tell either the Department or California that she was receiving FAP from other. Respondent's actions must be considered an intentional misrepresentation of her residence to obtain FAP benefits concurrently from more than one state.

### **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. 16. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits. 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, Respondent committed an IPV involving the concurrent receipt of benefits because Respondent claimed and received FAP benefits from the Department and the California concurrently. Therefore, Respondent is subject to a ten-year disqualification for an IPV involving the concurrent receipt of benefits.

### **DECISION AND ORDER**

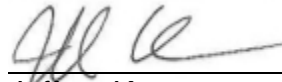
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of \$2,601.30 in MA benefits and \$1,071.00 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.

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$2,601.30 in MA benefits and \$1,071.00 in FAP benefits in accordance with Department policy.

IT IS FURTHER ORDERED that Respondent shall be disqualified from FAP for a period of 10 years.

JK/nr



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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**

Kimberly Kilmer  
800 Watertower  
Big Rapids, MI  
49307

Mecosta County DHHS- via electronic  
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MDHHS- Recoupment- via electronic mail

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**Petitioner**

OIG  
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48909-7562

**Respondent**

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[REDACTED], CA  
[REDACTED]