



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: November 1, 2018
MAHS Docket No.: 18-007136
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 31, 2018, from Lansing, Michigan. The Department was represented by Valerie Mathis, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] [REDACTED] appeared and represented himself.

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 June 13, 2016, the Department issued a Redetermination to Respondent to obtain information to review his eligibility for FAP and MA benefits. Respondent completed the Redetermination and returned it to the Department on July 8, 2016. Respondent affirmed that his address was in Michigan when he completed the Redetermination.

2. On November 15, 2016, Respondent began using his FAP benefits to complete EBT transactions exclusively in Florida. Respondent was in Florida helping his ill uncle.
3. Respondent did not report to the Department that he was in Florida helping his ill uncle.
4. Respondent applied for assistance from Florida while he was there assisting his uncle. Respondent used his uncle's address when he applied for assistance. Florida denied Respondent's application for MA and granted his application for FAP.
5. Respondent did not report to the Department that he applied for assistance from Florida.
6. The Department issued MA and FAP benefits to Respondent from January 2017 through June 2017.
7. Florida issued FAP benefits to Respondent from January 2017 through April 2017.
8. The Department investigated Respondent's case when it received an alert that Respondent received benefits from another state concurrently with the benefits issued by the Department.
9. The Department attempted to interview Respondent, but Respondent did not respond to the Department's attempt.
10. On June 25, 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.
11. The OIG requested Respondent be disqualified from FAP for 10 years for an IPV involving the concurrent receipt of benefits. The OIG requested recoupment of \$3,869.16 in MA benefits and \$1,164.00 in FAP benefits for benefits issued from January 2017 through June 2017.

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. For MA, an individual is a resident if he lives in Michigan except for a temporary absence. BEM 220, p. 2. For FAP, an individual is a resident if he lives in Michigan for any purpose other than a vacation, regardless of whether he has an intent to remain permanently. BEM 220, p. 1. An individual cannot receive FAP benefits from more than one state for the same month. BEM 222 (October 1, 2016), p. 3.

The Department did not establish that Respondent was overissued MA. The Department alleged that Respondent was overissued MA because he was not a resident of Michigan, but the Department did not present sufficient evidence to establish that Respondent changed his residence from Michigan. Respondent testified that he did not change his residence and that he was only temporarily absent to take care of his ill uncle. A temporary absence does not change an individual's state of residence for MA. Thus, Respondent's temporary absence to take care of his ill uncle did not change his residence from Michigan. Since Respondent was still a resident of Michigan, Respondent was still eligible for MA benefits from the Department. Therefore, Respondent was not overissued MA benefits.

The Department established that Respondent was overissued FAP. The Department presented sufficient evidence to establish that Respondent was not living in Michigan during the time that he was receiving benefits from the Department. Respondent testified that he was only temporarily absent to take care of his ill uncle. A temporary absence changes an individual's state of residence for FAP. Thus, Respondent's temporary absence to take care of his ill uncle changed his residence from Michigan. Since Respondent was not a resident of Michigan, Respondent was not eligible for FAP benefits from the Department. Therefore, Respondent was overissued FAP benefits. The Department presented sufficient evidence to establish that Respondent was no

longer living in Michigan beginning in November 2016 and that Respondent was overissued \$1,164.00 in FAP for the benefits issued from January 2017 through June 2017.

Intentional Program Violation

An intentional program violation (IPV) “shall consist of having intentionally: (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards.” 7 CFR 273.16(c). 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. 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. The Department did not present sufficient evidence to establish that Respondent intentionally withheld or misrepresented information to obtain or increase his benefits. The Department alleged that Respondent intentionally withheld or misrepresented information when he failed to report to the Department that he moved to Florida. However, the Department did not present any evidence to establish that it instructed Respondent to report a move or change in his residence to the Department, and Respondent denied ever having been instructed to report such a change to the Department. Thus, the Department did not establish that Respondent knew he was supposed to report his move or change in residence to the Department. Therefore, even though Respondent failed to report a move or change in residence, it cannot be considered an intentional program violation because there is no evidence that Respondent knew he was supposed to report such a change to the Department.

Disqualification

In general, individuals found to have committed an intentional program violation through an administrative disqualification hearing shall be ineligible to participate in FAP: (i) for a period of 12 months for the first violation, (ii) for a period of 24 months for the second violation, and (iii) permanently for a third violation. 7 CFR 273.16(b)(1). An individual found to have committed an intentional program violation with respect to his identity or place of residence in order to receive benefits from more than one state concurrently shall be ineligible to participate in FAP for 10 years. 7 CFR 273.16(b)(5). Only the individual who committed the violation shall be disqualified – not the entire household. 7 CFR 273.16(b)(11).

In this case, the Department did not establish that Respondent committed an intentional program violation, so Respondent is not disqualified from FAP.

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 did not receive an overissuance of MA, but Respondent did receive an overissuance of \$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 FAP.

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

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

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
17455 Grand River
Detroit, MI
48227

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