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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
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[REDACTED] MI [REDACTED]

Date Mailed: November 29, 2018
MAHS Docket No.: 18-007884
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION FOR
INTENTIONAL PROGRAM VIOLATION AND RECIPIENT CLAIM AND
OVERISSUANCE

Upon the request for a hearing by the Michigan Department of Health and Human Services (MDHHS), 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 Regulation (CFR), particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was scheduled for November 1, 2018, from Detroit, Michigan. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled hearing time. The Michigan Department of Health and Human Services (MDHHS) was represented by Derrick Gentry, regulation agent with the Office of Inspector General. Respondent did not appear for the hearing.

ISSUES

The first issue is whether MDHHS established a recipient claim of Food Assistance Program (FAP) benefits and an overissuance of Medical Assistance (MA) against Respondent.

The second issue is whether MDHHS established by clear and convincing evidence that Respondent committed an intentional program violation (IPV) which justifies imposing a disqualification.

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 October 12, 2016, Respondent electronically submitted to MDHHS an application for Food Assistance Program (FAP) and Medical Assistance (MA) benefits. Respondent reported a residential Michigan address. Boilerplate application language stated that clients are to report changes, such as income and address to MDHHS within 10 days. (Exhibit A, pp. 11-39.)
2. On June 8, 2017, Respondent's name appeared on a Paris report indicating receipt of duplicate assistance in Nevada and Michigan. (Exhibit A, p. 40.)
3. On June 9, 2017, following an inquiry from the State of Michigan, the State of Nevada emailed MDHHS to report that Respondent receives MA benefits from Nevada since January 2017, but has not been receiving FAP benefits. (Exhibit A, pp. 41-42.)
4. From January 2017 through July 2017, Respondent received MA benefits, which cost the State of Michigan \$[REDACTED] month. (Exhibit A, pp. 50-52.)
5. From January 2017 through July 2017, Respondent received FAP benefits of \$[REDACTED] month. (Exhibit A, p. 48.)
6. On July 19, 2018, MDHHS requested a hearing to establish recipient claims of \$[REDACTED] in FAP benefits and an overissuance of \$[REDACTED] in MA benefits from January 2017 through July 2017. MDHHS also requested a hearing to establish a 1-year IPV disqualification against Respondent. (Exhibit A, pp. 1-2.)

CONCLUSIONS OF LAW

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. MDHHS (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-.3011. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

MDHHS' Hearing Summary and testimony alleged that Respondent received over-issued FAP benefits totaling \$[REDACTED] and MA benefits totaling \$[REDACTED] from January 2017 through July 2017. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 6-7) sent to Respondent as part of MDHHS' prehearing procedures.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (January 2016), pp. 1-2. An overissuance is the amount of benefits issued to the client group in excess of what it

was eligible to receive. *Id.* Recoupment is an MDHHS action to identify and recover a benefit overissuance. *Id.*

Alleged FAP recipient claim

Federal regulations refer to FAP overissuances as “recipient claims” and mandate states to collect them. 7 CFR 273.18(a). The types of recipient claims are those caused by agency error, unintentional recipient claims, and IPV. 7 CFR 273.18(b).

MDHHS alleged that Respondent received FAP benefits during a time of non-Michigan residency. MDHHS further alleged that Respondent failed to report a change in residency after moving to Nevada which caused the OI.

Certified change reporting households are required to report changes in residency and address. 7 CFR 273.12(a)(1)(iii). State agencies have discretion to mandate reporting changes within 10 days after the household is aware of the change or within 10 days after the end of the month. 7 CFR 273.12(a)(2). MDHHS policy provides that clients must report changes in address within 10 days after being aware of the change. BAM 105 (January 2018), p. 12. Given federal and MDHHS regulations, Respondent had an obligation to report any change in address and/or residency within 10 days.

MDHHS policy states that a person must be a Michigan resident to be eligible for FAP benefits. BEM 220 (April 2018), p. 1. For purposes of FAP benefits, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. *Id.* Eligible persons may include persons who entered the state with a job commitment or to seek employment; and students. *Id.* Based on federal regulations and MDHHS policy, MDHHS may pursue a recipient claim against Respondent if Respondent was not a Michigan resident and failed to report a change in residency during the alleged overissuance period.

MDHHS presented emails from the State of Nevada verifying that Respondent received MA benefits from Nevada from January 2017 through July 2017. Respondent’s dual receipt of benefits is not insightful into determining whether Respondent resided in Michigan or Nevada during the alleged overissuance period.

MDHHS presented a CLEAR report (Exhibit A, pp.43-47) which listed various past addresses (and corresponding dates) for Respondent. One Nevada address was associated to Respondent to January 15, 2017. Two Michigan addresses were associated to Respondent for the entirety of January 2017 through July 2017. The evidence supported finding that Respondent was more likely a Michigan resident during the alleged OI period.

Given the evidence, MDHHS did not establish that Respondent was not a Michigan resident during the alleged OI period. Thus, MDHHS did not establish a FAP recipient claim against Respondent due to unreported residency.

Alleged MA OI

MDHHS alleged that Respondent was ineligible to receive MA benefits during the OI period due to Respondent's non-Michigan residency. The evaluation requires consideration of the definition of residency for MA benefits.

For purposes of MA, residency is based on circumstances for the calendar month being evaluated and certified. *Id.* For purposes of MA, a Michigan resident is an individual who is living in Michigan except for a temporary absence. *Id.* Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished. *Id.*

Residency policy for MA benefits is functionally equivalent to MDHHS' policy for FAP residency. The findings from the FAP analysis that MDHHS failed to establish that Respondent was a non-Michigan resident during the alleged OI period will be adopted for the MA analysis. Thus, MDHHS failed to establish an overissuance of MA benefits based on Michigan non-residency. MDHHS also alleged an overissuance based on duplicate receipt of benefits.

For all programs, benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. BEM 222 (October 2016), p. 1. Benefit duplication is prohibited for MA except in limited circumstances.¹ *Id.*

MDHHS may establish an overissuance of MA benefits for IPV or client error, but not for agency error. BAM 710 (October 2015) p. 1. Generally, MA overissuances are the amount of MA payments made by MDHHS.² *Id.*

MDHHS presented an email from the State of Nevada dated June 9, 2017, which reported that Respondent had received MA benefits since January 2017. The email sufficiently verified Respondent's receipt of MA in Nevada from January 2017 through the month of email (June 2017). Proof of Respondent's receipt of MA benefits in Nevada in July 2017 was not presented.

MDHHS presented documentation of the State of Michigan costs for Respondent's MA benefits. The documentation verified Michigan costs of \$ [REDACTED] month from each month during the alleged overissuance period.

¹ MDHHS does not state in BEM 222 what exceptions there are to receiving Medicaid in multiple states.

² Exceptions to the generality are for clients with Medicaid deductibles or long-term care. Neither circumstance is applicable to the present case.

MDHHS alleged that Respondent's receipt of dual benefits was due to Respondent's failure to report a change in residency and/or dual receipt of MA benefits. Dual benefits is indicative of a failure to report residency or receipt of dual benefits. Given the evidence, Respondent was likely at fault for receipt of dual benefits.

The evidence established that Respondent received MA from Nevada and Michigan from January 2016 through June 2016. The evidence established that the MA benefits costs from the OI period totaled \$ [REDACTED]. The evidence also established that the dual benefits were the fault of Respondent. Thus, MDHHS established an OI of \$ [REDACTED] against Respondent. MDHHS will be denied an OI for the \$ [REDACTED] MA costs for July 2016 as dual receipt of MA benefits was not established for that month.

Alleged IPV

MDHHS alleged Respondent received FAP and MA overissuances which were caused by an IPV. An 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 clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an IPV. 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence must be strong enough to cause a clear and firm belief that the proposition is true; it is more than proving that the proposition is probably true. M Civ JI 8.01. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

MDHHS seeks to impose a disqualification period based on Respondent's alleged failure to report non-Michigan residency and/or receipt of duplicate assistance. It has already been found that Respondent received an OI of MA benefits due to Respondent's receipt of dual MA benefits and failure to report receipt of MA benefits from outside of Michigan. For an IPV, MDHHS must establish that Respondent purposely failed to report receipt of duplicate MA benefits.

Clients have financial incentives to receive FAP benefits from multiple states. The financial incentive is supportive of an intent to defraud. The same incentive does not seem to apply for duplicate receipt of MA benefits. A client receiving Medicaid from one state does not receive any additional coverage by having Medicaid from another state. Thus, an intent to defraud cannot be inferred from Respondent's duplicate receipt of MA benefits.

MDHHS did not present verification of a written misreporting by Respondent. Generally, MDHHS will have difficulty in establishing a client's purposeful failure to report information without evidence of a written misreporting; the evidence was not persuasive in overcoming the generality.

Based on the evidence, MDHHS did not clearly and convincingly establish that Respondent intentionally failed to report updated residency. Thus, it is found that Respondent did not commit an IPV.

The standard disqualification period is used in all instances except when a court orders a different period. MDHHS is to apply the following disqualification periods to recipients determined to have committed an IPV: one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. 7 CFR 253.8 (b) and BAM 725 (January 2016), p. 16.

Without a finding that a client committed an IPV, an IPV disqualification cannot follow. MDHHS will be denied their request to establish a 1-year disqualification against Respondent as an IPV was not established.


DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish that Respondent committed an IPV justifying a 1-year period of disqualification. The MDHHS request to establish an IPV disqualification is **DENIED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish a \$[REDACTED] recipient claim in FAP benefits and \$[REDACTED] overissuance of MA benefits against Respondent. The MDHHS request to establish overissuances against Respondent are **PARTIALLY DENIED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent received an overissuance of \$[REDACTED] in MA benefits. The MDHHS request to establish an overissuance against Respondent is **PARTIALLY APPROVED**.

CG/



Christian Gardocki
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
MDHHS-Wayne 31-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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