



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] TN [REDACTED]

Date Mailed: December 10, 2018
MAHS Docket No.: 18-009218
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on November 8, 2018, from Lansing, Michigan. The Department was represented by Kelvin Christian, Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

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 the Food Assistance Program (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 an application for assistance dated August [REDACTED] 2016, Respondent acknowledged his duties and responsibilities including the duty to report any change of residency to the Department in a timely manner. Respondent did not

have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 10-23.

2. Respondent acknowledged under penalties of perjury that his August [REDACTED] 2016, application form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Exhibit A, pp 22-23.
3. Respondent starting using Food Assistance Program (FAP) benefits in Tennessee on December [REDACTED] 2016, and used them exclusively in Tennessee through August 24, 2017. Exhibit A, pp 24-26.
4. Respondent was issued a Tennessee driver's license on February [REDACTED] 2016. Exhibit A, pp 29-30.
5. Respondent received Food Assistance Program (FAP) benefits totaling \$ [REDACTED] from February 1, 2017, through July 31, 2017. Exhibit A, pp 38-39.
6. Respondent received Medical Assistance (MA) benefits with a value of \$ [REDACTED] from February 1, 2017, through July 31, 2017. Exhibit A, pp 36-37.
7. On August [REDACTED] 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ [REDACTED] overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-8.
8. The Department's OIG filed a hearing request on August 21, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
9. This was Respondent's first established IPV.
10. A notice of hearing was mailed to Respondent at the 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), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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.

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-.3011.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - the total OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, or
 - the total OI amount is less than \$500, and
 - the group has a previous IPV, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee.

Department of Health and Human Services Bridges
Administrative Manual (BAM) 720 (January 1, 2016),
pp 12-13.

Overissuance

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (January 1, 2018), p 1.

To be eligible for FAP benefits, a person must be a Michigan resident. A person is considered a resident under the FAP 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. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (April

1, 2018), pp 1-2. The Department is prohibited from imposing any durational residency requirements on the eligibility for FAP benefits. 7 CFR 273.3(a).

State agencies must adopt uniform standards to facilitate interoperability and portability nationwide. The term "interoperability" means the EBT system must enable benefits issued in the form of an EBT card to be redeemed in any state. 7 CFR 274.8(b)(10).

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (January 1, 2018), p 12. The Department will act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change, except that the Department will act on a change other than a tape match within 10 days of becoming aware of the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (January 1, 2018), p 7. A pending negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p 12.

On an application for assistance dated August [REDACTED] 2016, Respondent acknowledged his duties and responsibilities of receiving FAP benefits. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill these requirements. Respondent received FAP totaling \$[REDACTED] from February 1, 2017, through July 31, 2017. Respondent received MA benefits with a value of \$[REDACTED] from February 1, 2017, through July 31, 2017.

Respondent began using FAP benefits in Tennessee on December [REDACTED] 2016, and used them exclusively in Tennessee through August 24, 2017. Respondent was issued a Tennessee driver's license on February [REDACTED] 2016.

Respondent applied for FAP benefits on August [REDACTED] 2016, and was approved for FAP benefits. The evidence supports a finding that Respondent left Michigan on or around December [REDACTED] 2016, which was demonstrated by his exclusive use of FAP benefits in Tennessee from December 13, 2016, through August 24, 2017. Further, when Respondent was issued a Tennessee driver's license, this evidence supports a finding that he was not living in Michigan.

However, Respondent was not prohibited from using his FAP benefits in Tennessee and was not prohibited from temporarily leaving the state of Michigan. There is no durational requirement to become eligible for FAP benefits by living in Michigan, and therefore, there is no duration requirement establishing when a person is no longer living in Michigan.

Since there is no duty to report a temporary absence from Michigan, and there is no evidence that Respondent gave incomplete or inaccurate information about where he was living after December [REDACTED] 2016, then the Department has not established that

Respondent received an overissuance of FAP benefits based on an intentional program violation.

Eligibility for MA benefits requires that a person be a Michigan resident who is living in Michigan except for a temporary absence. Residency continues while temporarily absent from Michigan or there is an intent to return to Michigan when the purpose of the absence has been accomplished. BEM 220, p 2. This differs from FAP where no intent to remain in Michigan is required to remain eligible.

The evidence supports a finding that Respondent left Michigan on or around December [REDACTED] 2016, and remained outside Michigan through August 24, 2017. No evidence was presented on the record that Respondent intended to return to Michigan after his purpose for travelling to Tennessee had been accomplished. Under state law, the continued absence of a recipient of MA benefits from Michigan, unless the absence is temporary or intent to return is established, shall constitute abandonment by the recipient of MA benefits. MCL 400.32(2).

With no evidence of an intent to return to Michigan, Respondent was not eligible for Michigan MA benefits while living in Tennessee. If Respondent had reported to the Department that he no longer intended to live in Michigan on December [REDACTED] 2016, then the Department would have closed his MA benefits effective the first benefit period after January 14, 2017. Therefore, Respondent was not eligible for any of the MA benefits he received from February 1, 2017, through July 31, 2017, and he received a \$ [REDACTED] overissuance of MA benefits.

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding the reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits the understanding or ability to fulfill reporting responsibilities.

BAM 700, p 7, BAM 720, 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 (emphasis in original); see also 7 CFR 273.16(e)(6).

The Department has the burden of establishing by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

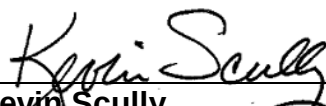
Since the record evidence does not establish that Respondent did not have a duty to report using his FAP benefits in Tennessee, and there is no evidence that he gave incomplete or inaccurate information to the Department, the Department failed to establish by clear and convincing evidence that Respondent committed an Intentional Program Violation.

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. The Department has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of Medical Assistance (MA) benefits in the amount of \$ [REDACTED]
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] of Medical Assistance (MA) benefits in accordance with Department policy.
4. The Department is ORDERED to delete the OI and cease any recoupment action with respect to the Food Assistance Program (FAP).

KS/hb



Kevin Scully
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

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

DHHS

Richard Latimore
4733 Conner
Detroit, MI 48215

Wayne County (District 57), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Respondent

[REDACTED]
[REDACTED]
[REDACTED] TN [REDACTED]