



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] AZ [REDACTED]

Date Mailed: January 3, 2019
MAHS Docket No.: 18-009569
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 December 20, 2018, from Lansing, Michigan. The Department was represented by Rick Rafferty, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] [REDACTED] did not appear. The hearing was held in Respondent's absence.

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], 2016, Respondent applied for assistance from the Department, including FAP benefits.
2. On December 22, 2016, the Department issued a Notice of Case Action to Respondent to notify her that she was approved for FAP benefits of \$194.00 per

month effective December 1, 2016. The Department instructed Respondent that she was responsible for reporting 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.

3. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her responsibilities to the Department.
4. In January 2017, Respondent moved from Michigan to [REDACTED]. Respondent did not report to the Department that she had a change in address.
5. The Department continued to issue FAP benefits and MA to Respondent.
6. Respondent did not use the FAP benefits issued to her by the Department after January 2017.
7. In May 2017, Respondent applied for MA from [REDACTED]. Respondent reported on her [REDACTED] application that she last received FAP benefits from Michigan in December 2016. Respondent reported on her application that she was a resident of [REDACTED].
8. [REDACTED] found Respondent eligible for assistance. [REDACTED] issued MA to Respondent from May 2017 through May 2018, and [REDACTED] issued FAP benefits to Respondent from May 2017 through October 2017.
9. The Department issued MA to Respondent through November 2017, and the Department issued FAP benefits to Respondent through October 2017.
10. The Department investigated Respondent's case when it noticed Respondent received benefits from another state concurrently with the benefits issued by the Department.
11. The Department attempted to interview Respondent, but Respondent did not respond to the Department's attempt.
12. On September 7, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
13. 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 \$2,495.59 in MA benefits and (the uncollected balance of) \$1,550.00 in FAP benefits for benefits issued from March 2017 through November 2017.
14. 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 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 she lives in Michigan except for a temporary absence. BEM 220, p. 2. For FAP, an individual is a resident if she lives in Michigan for any purpose other than a vacation, regardless of whether she 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 established that Respondent was overissued MA. The Department presented sufficient evidence to establish that Respondent was not a resident of Michigan when she received MA from the Department. An individual is ineligible for MA from the Department when that individual is no longer a resident. Thus, Respondent received MA that she was not entitled to. Therefore, Respondent owes the Department the cost of the MA she received but was not eligible for. The Department presented sufficient evidence to establish that the cost of MA overissued to Respondent was \$2,495.59 for the MA issued from March 2017 through November 2017.

The Department also established that Respondent was overissued FAP benefits. The Department presented sufficient evidence to establish that Respondent was not living in Michigan during the time that she was receiving FAP benefits from the Department. An individual is ineligible for FAP benefits from the Department when that individual is no longer residing in Michigan. Thus, Respondent received FAP benefits that he was not entitled to. Therefore, Respondent owes the Department the FAP benefits she received but was not eligible for. The Department presented sufficient evidence to establish that Respondent was overissued \$1,550.00 in FAP benefits from March 2017 through October 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. Although Respondent failed to report her change in address to the Department within 10 days as required, the Department did not present any evidence to establish that Respondent actually used the FAP benefits that were issued to her by the Department after she moved. To the contrary, when Respondent moved, she ceased using the FAP benefits issued by the Department. The fact that Respondent did not use her FAP benefits after she moved, demonstrates that she did not have any intent to misrepresent information to obtain benefits she was not entitled to receive. Therefore, Respondent did not commit an IPV.

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 received an overissuance of \$2,495.59 in MA, and Respondent received an overissuance of \$1,550.00 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 any remaining balance of the \$2,495.59 MA overissuance and any remaining balance of the \$1,550.00 FAP overissuance 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

Barbara Schram - 4
711 West Chisholm St.
Alpena, MI
49707

Alpena 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], AZ
[REDACTED]