



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: February 25, 2019
MAHS Docket No.: 18-011417
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████ ██████

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 February 21, 2019, from Lansing, Michigan. The Department was represented by Derrick Gentry, Regulation Agent of the Office of Inspector General (OIG). Respondent, ██████ ██████ did not appear. The hearing was held in Respondent's absence.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and Medical Assistance (MA) 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 ██████ ██████ 2018, the Department issued a Redetermination to Respondent to obtain information to review her eligibility for assistance.
2. On ██████ ██████ 2018, the Department received Respondent's completed Redetermination in which Respondent asserted that she was still living in Michigan.

3. On May 11, 2018, Respondent moved to Kentucky.
4. Respondent applied for assistance from Kentucky after she moved there. Respondent received assistance from Kentucky from May 16, 2018, through August 31, 2018.
5. The Department issued Respondent FAP benefits from June 2018 through October 2018 and MA from June 2018 through September 2018. The Department was unaware that Respondent had moved to Kentucky or that Respondent was receiving assistance from Kentucky.
6. The Department investigated Respondent's case when it received an alert that Respondent received benefits concurrently from the Department and another state.
7. The Department contacted Respondent, and Respondent stated she moved to Kentucky on May 11, 2018, and did not report it to the Department because the move was not planned.
8. On October 31, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
9. 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 \$1,761.00 in FAP benefits and \$1,848.82 in MA benefits.
10. 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 (October 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 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. For MA, an individual is a resident if she lives in Michigan except for a temporary absence. BEM 220, p. 2. An individual cannot receive FAP benefits from more than one state for the same month. BEM 222 (October 1, 2018), p. 3. A negative action must take effect no later than the month after the change when there is reliable information that a group has left the state. BAM 220 (January 1, 2019), p. 5.

Here, Respondent continued to receive FAP and MA assistance from the Department after Respondent moved to Kentucky on May 11, 2018. Respondent did not present any evidence to establish that she was only temporarily absent from Michigan. When Respondent moved to Kentucky on May 11, 2018, Respondent was no longer eligible for assistance from the Department because Respondent was no longer a resident of Michigan. The Department presented sufficient evidence to establish that Respondent was overissued \$1,761.00 in FAP benefits from [REDACTED] 2018 through [REDACTED] 2018 and \$1,848.82 in MA benefits from [REDACTED] 2018 through [REDACTED] 2018.

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 her benefits. The Department alleged that Respondent intentionally withheld or misrepresented information when she failed to report to the Department that she moved to Kentucky. 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. Thus, the Department did not establish that Respondent knew she was supposed to report her 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 she 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 received an overissuance of \$1,761.00 in FAP benefits and \$1,848.82 in MA 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 \$1,761.00 in FAP benefits and \$1,848.82 in MA 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 Robert Gordon, 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

L. Bengel- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

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