



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], PA [REDACTED]

Date Mailed: February 21, 2019
MAHS Docket No.: 18-011615
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION FOR CONCURRENT BENEFITS
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 Regulations, particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on February 6, 2019, from Lansing, Michigan.

The Department was represented by Quocshawn Parker of the Office of Inspector General (OIG). Ms. Parker testified on behalf of the Department. The Department submitted 100 exhibits which were admitted into evidence.

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). The record was closed at the conclusion of the hearing.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program benefits that the Department is entitled to recoup?
2. Did Respondent receive an overissuance (OI) of Medicaid (MA) benefits that the Department is entitled to recoup?
3. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
4. Should Respondent be disqualified from receiving FAP benefits for 10 years?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on November 9, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving FAP benefits for 10 years.
3. Respondent was a recipient of FAP, and Medicaid benefits, issued by the Department.
4. On the Assistance Application, dated [REDACTED], 2018, and the redetermination signed by Respondent on [REDACTED], 2017, Respondent reported a [REDACTED] Michigan address. [Dept Exh. 12-45; 46-53].
5. Respondent was aware of the responsibility to report changes to the Department that would affect her ability to continue receiving assistance from the state of Michigan. [Dept Exh. 26, 52].
6. Respondent had no apparent mental impairments that would limit the understanding or ability to fulfill this requirement. Respondent checked "no" on the application that she was not disabled and failed to answer the same question on the redetermination. [Dept Exh. 16, 47].
7. The Work Number indicated that Respondent was hired by [REDACTED] on [REDACTED], 2017. Respondent's address was listed as [REDACTED], [REDACTED] PA. [REDACTED] [Dept Exh. 54-55].
8. On [REDACTED], 2017, Respondent signed a lease for [REDACTED] PA. [REDACTED] [Dept Exh. 83-93].
9. The state of Pennsylvania reported that Respondent received FAP benefits from [REDACTED], 2017 through [REDACTED], 2017, and [REDACTED], 2017 through [REDACTED], 2017. [Dept Exh. 59, 79-82].
10. On the [REDACTED], 2017 Pennsylvania application for FAP and Medicaid, Respondent answered "no" to the question of whether she was receiving SNAP/FAP or Medicaid benefits from another state. [Dept Exh. 67].
11. The OIG indicates that the time period they are considering the fraud period is [REDACTED], 2017 through [REDACTED], 2017 for the FAP program. [Dept Exh. 4].

12. During the alleged fraud period, Respondent was issued \$576.00 in FAP benefits and \$2,723.31 in Medicaid benefits from the State of Michigan. [Dept Exh. 94-97].
13. The OIG indicates that the time period they are considering the fraud period is [REDACTED], 2017 through [REDACTED], 2017 for the Medicaid program. [Dept Exh. 4, 95-97].
14. During the alleged fraud period, Respondent was issued FAP benefits from the State of Pennsylvania from [REDACTED], 2017 through [REDACTED], 2017. [Dept Exh. 4, 94].
15. This was Respondent's first alleged IPV for the FAP and Medicaid programs. [Dept. Exh. 4].
16. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services 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), and Department of Health and Human Services 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 of Health and Human Services (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.

Effective October 1, 2017, the Department's Office of Inspector General requests Intentional Program Violation hearings for the following cases:

1. FAP trafficking overissuances that are not forwarded to the prosecutor.

2. Prosecution of welfare fraud or Food Assistance Program trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA) and Food Assistance Program (FAP) programs combined is \$500 or more, or
 - the total amount is less than \$500, and
 - the group has a previous Intentional Program Violation, or
 - the alleged Intentional Program Violation involves Food Assistance Program trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee. BAM 720, pp 12-13 (10/1/2017).

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 his or her reporting responsibilities, **and**
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. 7 CFR 271.2; BAM 720, p 1 (emphasis in original).

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). Clear and

convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, Respondent had moved to Pennsylvania and was employed in Pennsylvania as of [REDACTED] 2017. There is evidence showing that Respondent did not inform the State of Pennsylvania that she was receiving FAP and Medicaid benefits from another state. There was no evidence presented that Respondent had notified the State of Michigan that she had applied for FAP and Medicaid benefits in Pennsylvania.

Disqualification

A client who is found to have committed an Intentional Program Violation by a court or hearing decision is disqualified from receiving program benefits. 7 CFR 273.16(b)(1); 7 CFR 273.16(b)(5); 7 CFR 273.16(b)(11); BAM 720, p 16. Clients are disqualified for ten years for a Food Assistance Program Intentional Program Violation involving **concurrent receipt of benefits**, and, for all other Intentional Program Violation cases involving Family Independence Program, Food Assistance Program or State Disability Assistance, for standard disqualification periods of one year for the first Intentional Program Violation, two years for the second Intentional Program Violation, and lifetime for the third Intentional Program Violation or conviction of two felonies for the use, possession, or distribution of controlled substances in separate periods if both offenses occurred after August 22, 1996. 21 USC 862a; 7 CFR 273.1(b)(7)(vii); 7 CFR 273.11(m); 7 CFR 273.11(c)(1); BEM 203, p 2; BAM 720, p 16. A disqualified member may continue as the grantee **only if** there is no other eligible adult in the group. BAM 720, p 17 (emphasis in original).

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720, p 16. A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. *Id.*

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA or FAP. BAM 720, p 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710, p 2 (1/1/2018).

In this case, Respondent received a concurrent receipt of FAP and Medicaid benefits from the states of Michigan and Pennsylvania. Consequently, Respondent is disqualified from receiving FAP benefits for 10 years.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p 1 (1/1/2016).

In this case, Respondent was receiving concurrent benefits from the states of Pennsylvania and Michigan, from September 21, 2017 through November 30, 2017,

without informing the Department that she had moved to and was working in Pennsylvania.

Respondent's signature on the FAP redetermination dated April 3, 2017, certifies that she was aware that fraudulent participation in FAP and Medicaid could result in criminal, civil or administrative claims. Because of Respondent's failure to report that she was had moved to and was working in Pennsylvania, in addition to receiving FAP and Medicaid from Pennsylvania, she received an overissuance and the Department is entitled to recoup.

DECISION AND ORDER

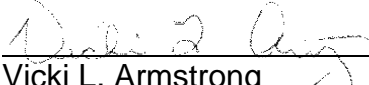
Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, this Administrative Law Judge concludes that the Department has established by clear and convincing evidence that Respondent committed an IPV.

1. Respondent did receive an OI of FAP benefits in the amount of \$576.00.
2. Respondent did receive an OI of Medicaid benefits in the amount of \$2,723.31.

The Department is ORDERED to initiate recoupment/collection procedures for the total amount of \$3,299.31 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for 10 years.

VLA/nr



Vicki L. Armstrong
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

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Wayne 17 County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

DHHS

Tara Roland 82-17
8655 Greenfield
Detroit, MI
48228

Respondent

[REDACTED]
[REDACTED]
[REDACTED] PA
[REDACTED]