



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

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Date Mailed: February 21, 2019
MAHS Docket No.: 18-012506
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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, telephone hearing was held on January 29, 2019, from Lansing, Michigan. The Department was represented by Adriane Laugavits, 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 ██████████ ██████████ 2018, Respondent acknowledged her duties and responsibilities including the duty to report any change of circumstances affecting her eligibility for benefits. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 10-44.

2. Respondent last use of Food Assistance Program (FAP) in Michigan was on June 21, 2018, and she used them in Iowa, Nebraska, and Utah from July 21, 2018, through November 15, 2018. Exhibit A, pp 45-46.
3. Respondent made five purchases in Nebraska using her Food Assistance Program (FAP) benefits over a one-week period in 2018. Exhibit A, p 45.
4. Through a collateral contact, the Department discovered that Respondent had requested that her child's school records be transferred to an elementary school in Nebraska. Exhibit A, p 47.
5. Respondent received Food Assistance Program (FAP) benefits totaling \$353 from October 1, 2018, through October 31, 2018. Exhibit A, p 48.
6. Respondent received Medical Assistance (MA) with a value of \$446.59 from October 1, 2018, through October 31, 2018. Exhibit A, pp 49-50.
7. On November 30, 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$799.59 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 November 30, 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. 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.

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.

Clients must report changes in circumstances that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. Changes that must be reported include the duty to report a change of residency. Department of Human Services Bridges Assistance Manual (BAM) 105 (January 1, 2018), pp 1-20.

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 [REDACTED] [REDACTED] 2018, Respondent acknowledged the duty to report a change of residency. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

The record evidence supports a finding that Respondent left Michigan after June 21, 2018, because she used her FAP benefits exclusively outside Michigan from July 21, 2018, through November 15, 2018. There is evidence that Respondent was in Nebraska in August of 2018, because she used her FAP benefits in Nebraska and there was a request for her child's school records to be transferred to an elementary school in Nebraska.

However, the evidence does not support a finding that Respondent did not intend to continue living in Michigan after temporarily visiting Iowa, Nebraska, and Utah. Although Respondent requested that school records be sent to an elementary school in Nebraska, the evidence does not support a finding that she spent more than one week there. No evidence was presented on the record explaining the purpose of having the records sent to the Nebraska school. No evidence was presented that Respondent applied for food assistance in another state. The evidence does not support a finding that Respondent moved out of Michigan permanently or that she intended to become a resident of another state.

The Department is prohibited from imposing any duration residency requirement for the purposes of determining eligibility for FAP benefits. 7 CFR 273.3.

Department policy allows for a person to remain eligible for MA benefits while temporarily absent from Michigan or intends to return to Michigan. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (April 1, 2018), p 2.

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.*

The record evidence does not establish by clear and convincing evidence that Respondent received an overissuance of MA or FAP benefits. The record evidence does not establish that Respondent intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination.

This Administrative Law Judge finds that the Department has not presented sufficient evidence to establish that Respondent received an overissuance of Medical Assistance (MA) or Food Assistance Program (FAP) benefits. The Department has failed to establish an Intentional Program Violation (IPV).

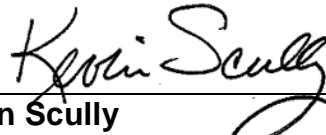
DECISION AND ORDER

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 NOT** receive an OI of Medical Assistance (MA) or Food Assistance Program (FAP) benefits.
3. The Department is **ORDERED** to delete the OI and cease any recoupment action.

KS/dh



Kevin Scully
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

DHHS

Rolando Gomez
1365 Cleaver Road
Caro, MI 48723

Tuscola County, DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Respondent

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