



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], OH [REDACTED]

Date Mailed: May 15, 2019
MOAHR Docket No.: 19-002098
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on May 8, 2019, from Lansing, Michigan. The Department was represented by Patrick Cousineau, 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).

Department's Exhibit A pages 1-54 were admitted as evidence.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent receive an overissuance of Medical Assistance (MA) Program 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)?
4. Should Respondent be disqualified from receiving benefits for 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. The Department's OIG filed a hearing request on February 22, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG **has** requested that Respondent be disqualified from receiving FAP benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent **was** aware of the responsibility to maintain residency in Michigan for benefit receipt and of his responsibility to report any changes in his circumstances within ten days.
5. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is August 7, 2017, to November 30, 2017 (fraud period).
7. During the fraud period, Respondent was issued \$734.00 in FAP benefits and \$690.84 in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in \$734.00 in FAP benefits and \$690.84 in MA benefits for a total amount of \$1,424.84.
9. This was Respondent's **first** alleged IPV.
10. 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), 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.

Pertinent Department policy dictates:

To be eligible for FAP or MA in the State of Michigan, a person must be a Michigan resident. Bridges uses the requirements in the Residence section in this item to determine if a person is a Michigan resident. BEM 220, page 1

For FAP:

A person is considered a resident **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.

A homeless person is an individual who lacks a fixed and regular nighttime dwelling or whose temporary night time dwelling is one of the following:

- Supervised private or public shelter for the homeless.

Exception: For FAP, a Respondent is considered homeless only for the first 90 days.

- Halfway house or similar facility to accommodate persons released from institutions.
- Home of another person.

Exception: For FAP, a Respondent is considered homeless only for the first 90 days.

- Place not designed or ordinarily used as a dwelling (for example, a building entrance or hallway, bus station, park, campsite, vehicle).

Exception: **For FAP, a Respondent is considered homeless only for the first 90 days. Lack of a permanent dwelling or fixed mailing address does not affect an individual's state residence status.** Assistance cannot be denied solely because the individual has no permanent dwelling or fixed address. BEM 220, page 2

For Medicaid:

A Michigan resident is an individual who is living in Michigan except for a temporary absence. Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished.

Example: Individuals who spend the winter months in a warmer climate and return to their home in the spring. They remain MI residents during the winter months.

Example: College students who attend school out of state but return home during semester breaks or for the summer can remain MI residents. (BEM 220, page 2)

Eligible persons may include:

- Persons who entered the state with a job commitment or to seek employment; and
- Students (for FAP only, this includes students living at home during a school break.) BEM 220, pages 1-2

Effective January 1, 2016, 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, or
 - the total 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. BAM 720, pp 12-13 (1/1/2016).

Intentional Program Violation

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

- The Respondent intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The Respondent was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The Respondent has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 720, p 1.

An IPV requires that the Department establish by clear and convincing evidence that the Respondent 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(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.

The evidence on the record indicates that:

The Client's FAP case closed on January 31, 2016 due to FEE investigation I-16-01-102820. The Client then reapplied for benefits on [REDACTED] 2017, and began receiving FAP benefits again at that time. The Client's DHHS-1171 application dated [REDACTED] 2017, was reviewed and revealed that the Client reported as homeless with a mailing address of [REDACTED], OH [REDACTED]. The Client's IP address history was reviewed and revealed that the Client was in Ohio when this application was submitted.

An IG-301 report EBT Purchase History Database search revealed that the client had out of state EBT transactions in Ohio from September 23, 2015-February 23, 2016. The client's EBT transactions started up again on August 11, 2017, and continued until December 10, 2017; all of the client's EBT spending during this time period occurred in Ohio with the exception of two transactions in Florida on October 26, 2017, and October 28, 2017. The Client had no EBT spending in Michigan during this time period.

Work Number revealed that the Client's most recent employment ended in 2012.

LexisNexis revealed the most recent out of state addresses for the Client to be [REDACTED], OH [REDACTED] and [REDACTED], GA [REDACTED]. The Client is listed as having become an Ohio Registered Voter on September 15, 2016, with the address of [REDACTED], OH [REDACTED]. A Google search for this address revealed it to be a single family home and the [REDACTED] County (OH) online

property records revealed [REDACTED] to be the current owner as of February 7, 2013. A Google search for [REDACTED], GA [REDACTED] revealed no information regarding this property.

Thomas Deepe with the State of Ohio advised that the Client received SNAP from March 2016 to January 2017 and is receiving MA benefits as of March 2016.

An interview letter was mailed on February 14, 2019, to the Client at [REDACTED] OH [REDACTED]. The interview was scheduled for February 21, 2019, at the Oakland County DHHS Southfield District Office.

The case was reviewed with IP Locator Specialist Jessica Brinks of the OIG Investigative Analytics Unit for concerns of possible identify theft. The case does not appear to be identify theft as the Client reported the same address ([REDACTED] OH [REDACTED]) and the same email address ([REDACTED]) on his DHHS application dated [REDACTED] 2017, and on his Ohio application dated January 22, 2016, and also reported the same phone number ([REDACTED]) on his DHHS application dated May 6, 2015, and on his Ohio application dated January 22, 2016.

The State of Ohio advised that the Client received SNAP from March 2016 to January 2017 and is receiving MA benefits as of March 2016. LexisNexis also revealed that the Client is listed as having become an Ohio Registered Voter on September 15, 2016. The Client's EBT history revealed that the Client had out of state EBT transactions in Ohio from September 23, 2015 – February 23, 2016. The Client's FAP case was closed on January 31, 2016, due to FEE investigation I-16-01-102820. The Client then reapplied for benefits on [REDACTED] 2017, and began receiving FAP benefits again at that time. The Client reported as homeless with a mailing address of [REDACTED] OH [REDACTED]. The Client's IP address history revealed that the client was in Ohio when this application was submitted. The client's EBT transactions started up again on August 11, 2017, and continued until December 10, 2017; all of the Client's EBT spending during this time period occurred in Ohio with the exception of two transactions in Florida on October 26, 2017, and October 28, 2017. The Client had no EBT spending in Michigan during this time period.

The FEE investigation for this case was submitted on October 23, 2017. Therefore, the fraud period for this investigation will be from [REDACTED] 7, 2017 - November 30, 2017, with a total FAP overissuance of \$734.00 and a total MA overissuance of \$690.84, thereby creating a total overissuance of benefits of \$1,424.84. Although the Client reapplied for DHHS benefits on [REDACTED] 2017, and reported as being a Michigan resident at that time, the Client's IP address history and EBT history indicates that he was actually still in Ohio during this time and afterwards.

The Department established by clear and convincing evidence that Respondent intentionally established residency in Ohio. Respondent did not notify the State of Michigan that he had moved and continued to use State of Michigan FAP and MA

benefits in the State of Ohio, when Respondent was not a resident of Michigan. Respondent did sign an application stating that he understood the reporting responsibilities. Respondent withheld or misrepresented information that he was a resident of the State of Michigan, while he was resident of the State of Ohio for the purpose of maintaining FAP and MA benefits. Therefore, the Department has established an IPV.

Disqualification

A court or hearing decision that finds a Respondent committed an IPV disqualifies that Respondent from receiving program benefits. BAM 720, p 15. A disqualified Respondent remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p 17.

Respondents 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. Respondents are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p 18.

Overissuance

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

In the above captioned matter, the record evidence shows Respondent intentionally established residency in the State of Ohio from March 2016-January 2017. Respondent failed to report changes in circumstances (that she had moved to Ohio). FAP and MA benefits were issued to the Respondent from the period of March 2016-January 2017 in the amount of \$1424.84. Total alleged over-issuance amount is \$1424.84.

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, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an over issuance of Food Assistance Program (FAP) benefits in the amount of \$734.00.
3. Respondent did receive an over issuance of Medical Assistance (MA) benefits in the amount \$690.84.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$1,424.84 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program for a period of **12 months**.

LL/hb



Landis Lain
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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR 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

Linda Gooden
25620 W. 8 Mile Rd
Southfield, MI 48033

Oakland County (District 3), DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED], OH [REDACTED]