



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: July 19, 2019
MOAHR Docket No.: 19-002291
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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. The hearing was adjourned on April 18, 2019. After due notice, a telephone hearing was held on June 25, 2019, from Lansing, Michigan. The Department was represented by Amber Johnson, Regulation Agent of the Office of Inspector General (OIG). Respondent represented herself.

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 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 [REDACTED] 2016, Respondent acknowledged her duties and responsibilities including the duty to report changes of residency and the receipt of benefits from another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 11-53.

2. On or around [REDACTED] [REDACTED] 2017, Respondent submitted an application for assistance to the state of Florida reporting that she lived in Florida as of August 14, 2017. Exhibit A, pp 66-71.
3. Respondent reported to the state of Florida that members of her household had received food and medical assistance from another state in the last 30 days. Exhibit A, p 71.
4. Respondent began using Michigan Food Assistance Program (FAP) benefits in Florida on August 13, 2017, and used them predominately in Florida but exclusively outside Michigan through October 4, 2017. Exhibit A, pp 73-76
5. Respondent received Michigan Food Assistance Program (FAP) totaling \$784 from August 1, 2017, through September 30, 2017. Exhibit A, p 72.
6. Respondent received Florida food assistance benefits from the state of Florida from August 21, 2017, through January 31, 2018. Exhibit A, 54-65.
7. Respondent received Michigan Medical Assistance with a value of \$5,026.46 from August 1, 2017, through December 31, 2017. Exhibit A, pp 77-88.
8. Respondent received Florida Medicaid benefits from the state of Florida from August July 24, 2018, through September 30, 2018. Exhibit A, pp 54-65.
9. The Department's OIG filed a hearing request on March 5, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
10. On March 5, 2019, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$5,810.46 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-8.
11. This was Respondent's first established IPV.
12. 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 (October 1, 2017), pp 12-13.

Overissuance

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 (October 1, 2018), p 1.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. Benefit duplication is prohibited except for MA and FAP in limited circumstances. Department of Health and Human Services Bridges Eligibility Manual (BEM) 222 (October 1, 2018), p 3.

An individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple SNAP benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years. 7 CFR 273(b)(5).

On an application for assistance dated [REDACTED] 2016, Respondent acknowledged duties and responsibilities including the duty to report changes of residency and the receipt of benefits from another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

The evidence supports a finding that Respondent and her entire household relocated in Florida and used their Michigan Food Assistance Program (FAP) benefits predominately in Florida from August 13, 2017, through October 4, 2017. Respondent made two purchases in Georgia but no purchases in Michigan during that period. While in Florida, Respondent applied for and was approved for food and medical assistance from the state of Florida on or around August 24, 2017. Respondent reported to the state of Florida that members of her household had received food and medical assistance from another state in the last 30 days. No evidence was presented on the record that Respondent was fleeing domestic violence in Michigan and the same family members from her household in Michigan were reported on her Florida application for assistance.

Respondent received Michigan FAP benefits totaling \$784 from August 21, 2017, through January 31, 2018, and used those benefits to make purchases in Florida. During that same period, Respondent was concurrently receiving food assistance from the state of Florida. Respondent was not eligible to receive any Michigan FAP benefits while concurrently receiving food assistance from Florida. Therefore, Respondent received a \$784 overissuance of Michigan FAP benefits.

Respondent received Michigan MA benefits with a value of \$5,026.46 from August 1, 2017, through December 31, 2017. During that same period, Respondent was concurrently receiving Medicaid benefits from the state of Florida. Respondent was not eligible to receive any Michigan MA benefits while concurrently receiving Medicaid from Florida. Therefore, Respondent received a \$5,026.46 overissuance of Michigan MA benefits.

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 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 the 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.*

Respondent acknowledged the duties and responsibilities of receiving Michigan FAP and MA benefits on an application for assistance dated [REDACTED] 2016. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Respondent submitted an application for assistance to the state of Florida on or around [REDACTED] 2017. The evidence supports a finding that Respondent truthfully reported that she had move to Florida and that she had received public assistance from another state in the previous 30 days. Respondent did not dispute that she moved to Florida with the intent to live there. No evidence was presented on the record that Respondent made any attempt to report to the state of Michigan that she was no longer living in Michigan or that she no longer intended to remain a Michigan resident.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report that she had relocated to Florida and applied for Florida food and medical assistance for the purposes of maintaining her eligibility for Michigan FAP and MA benefits that she would not have been eligible for otherwise.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. A disqualified recipient remains a member of an active group as long as the disqualified person lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

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. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (January 1, 2018), p. 2. Clients 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. 16.

The Department has established an Intentional Program Violation (IPV).

A twelve-month disqualification from the Food Assistance Program (FAP) is appropriate in this case because although Respondent did receive concurrent food assistance, she did not make a fraudulent statement or representation with respect to identify or place of residence. 7 CFR 273(b)(5). Respondent intentionally failed to report information to Michigan resulting in an overissuance of Michigan benefits, but truthfully reported where she was living and her receipt of Michigan benefits to the state of Florida.

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 OI of Michigan Food Assistance Program (FAP) benefits in the amount of \$784.
3. Respondent did receive an OI of Michigan Medical Assistance (MA) benefits in the amount of \$5,026.46.
4. The Department is ORDERED to initiate recoupment procedures for the amount of \$5,810.46 in accordance with Department policy.

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

KS/hb



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 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 Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Denise McCoggle
27260 Plymouth Rd
Redford, MI 48239

Wayne County (District 15), DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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