



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
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Date Mailed: June 28, 2019
MOAHR Docket No.: 19-002673
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

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 June 27, 2019, from Lansing, Michigan. The Department was represented by Patrick Cousineau, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] [REDACTED] did not appear. The hearing was held in Respondent's absence.

One exhibit was admitted into evidence during the hearing. A 99-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

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 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 ■■■■■ 2016, Respondent applied for Medical Assistance (MA) from the Department. In the application, Respondent asserted that her residence was in Michigan. The Department instructed Respondent to report all changes which could affect her eligibility for assistance, including changes in her address.
2. On ■■■■■ 2016, Respondent applied for Food Assistance Program (FAP) benefits from the Department. In the application, Respondent asserted that she her residence was in Michigan. The Department instructed Respondent to report all changes which could affect her eligibility for assistance, including changes in her address.
3. Respondent did not have any apparent physical or mental impairment that would limit her understanding or her ability to fulfill her reporting responsibility.
4. On February 22, 2017, Respondent was issued a driver license in California.
5. In April 2017, Respondent completed all her EBT transactions at retailers in Michigan.
6. On May 31, 2017, Respondent applied for MA and FAP benefits from California. Respondent submitted an application in which she asserted that her residence was in California. Respondent answered "No" when asked if she planned to leave California for more than 30 days.
7. Respondent did not report to the Department that she had moved from Michigan.
8. The Department provided FAP benefits to Respondent through April 2017, and the Department provided MA to Respondent through February 2018.
9. The Department investigated Respondent's case and determined that Respondent was overissued assistance because the Department issued Respondent assistance after she moved from Michigan.
10. The Department issued Respondent \$194.00 in FAP benefits in April 2017, and the Department issued Respondent MA from April 2017 through February 2018 at a cost of \$2,797.98.
11. The Department attempted to contact Respondent, but the Department was unable to obtain an explanation from Respondent.
12. On March 5, 2019, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.

13. The OIG requested Respondent be disqualified from FAP for 12 months for a first IPV. The OIG requested recoupment of \$2,797.98 in MA benefits and \$194.00 in FAP benefits.
14. 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 MA, an individual is a resident if she lives in Michigan except for a temporary absence. BEM 220, p. 2. 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.

The Department alleged that Respondent was not living in Michigan as of February 2017 because she obtained a California driver license then. The Department asserted that Respondent was overissued benefits effective April 2017 because she moved in February 2017 did not report her move to the Department. The Department did not present sufficient evidence to support its position. Respondent was in Michigan in April

2017 as is evidenced by her EBT transaction history showing that she completed her EBT transactions exclusively in Michigan in April 2017.

The Department's only reliable evidence that Respondent moved was the assistance application Respondent submitted in California on May 31, 2017, so the Department's evidence established that the earliest date Respondent moved was May 31, 2017. Once Respondent moved, Respondent had 10 days to report her change of address and then the Department had 10 days to act on it. BAM 105 (January 1, 2019) and BAM 220 (April 1, 2019). Thus, the earliest the Department's action could have taken effect would have been July 2017. Therefore, the only benefits that were overissued were those issued from July 2017 through February 2018. Respondent was only issued MA during this time, and the cost of the MA issued to Respondent during this time was \$2,073.21.

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 alleged that Respondent committed an intentional program violation by failing to report that she moved in February 2017 and then continuing to receive FAP benefits from the Department. As stated in the overissuance section, the Department did not present sufficient evidence to support its allegation that Respondent moved in February 2017. Therefore, there is insufficient evidence to establish that Respondent committed an intentional program violation to obtain FAP benefits she was not entitled to receive.

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 \$2,073.21 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 \$2,073.21 in MA benefits in accordance with Department policy.

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 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

Dawn Tromontine
41227 Mound Rd.
Sterling Heights, MI
48314

Macomb 36 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]