



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], MI [REDACTED]

Date Mailed: August 15, 2019
MOAHR Docket No.: 19-003588
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 or Petitioner), 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 August 13, 2019, from Lansing, Michigan. The Department was represented by LaChaunda Walker, 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).

Petitioner's Exhibit A, pages 1-58 were admitted as evidence.

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 receiving benefits for FAP and MA?

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 March 27, 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 program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent **was** aware of the responsibility to report changes in 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 1, 2015-July 31, 2016 (fraud period).
7. During the fraud period, Respondent was issued \$6,132 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$2,328 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$3,804.
9. During the fraud period, Respondent was issued \$2,777.82 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
10. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$2,777.82
11. This was Respondent's **first** alleged 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), 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 Department established by clear and convincing evidence that Respondent did not report that two household members had left her home and established residency in Nevada. Respondent did not notify the State of Michigan that her grandchildren had moved and continued to use State of Michigan FAP and MA benefits when her grandchildren resided in the State of Nevada, and not residents of Michigan. Respondent did sign an application stating that he understood the reporting responsibilities. Respondent withheld or misrepresented information, while maintaining benefits for her grandchildren who were no longer residing with her and who had an open case with their mother in the State of Nevada 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).

The evidence indicates that Respondent acknowledged her rights and responsibilities to report accurate information and changes in circumstances within 10 days on DHHS-1171 application signed [REDACTED] 2015, and DHHS-1010 Redetermination signed [REDACTED] 2015. On this form, she reported herself, [REDACTED] and [REDACTED] as living at [REDACTED], MI [REDACTED]. Case comments submitted on [REDACTED] 2016, state "no changes in customer circumstances no income."

OIG Agent, William Huddleston, completed a FEE investigation on July 31, 2016. He proposed that the children be removed from Respondent's case. Bridges issuance summary shows the standard benefit amount was issued in 2015-2016 for a household of three. On July 27, 2016, Nevada DWSS Administrative Assistant, Delmy Chicas, reported that [REDACTED] and [REDACTED] were receiving benefits on their mother, [REDACTED]'s, welfare case. Out of state benefits started August of 2015. Lexis Nexis ran March 5, 2019, does not show a voter's registration, driver's license, motor vehicle registration or Nevada property lease for the subject. The overissuance FAP budget and MA Capitation Reports were reviewed. On February 9, 2017, the subject missed her OIG interview at Gratiot/7 Mile District office. On February 16, 2017, the subject called the Agent. Respondent stated that she was granted temporary guardianship of [REDACTED] and [REDACTED] in 2012. She had stable housing at the time. However, things changed in 2015. Respondent and the children moved into the children's mother's home. Reportedly, their mother lost her home, later the same year. They then moved in with another relative. The Agent explained during the FEE investigation that Respondent's sister, [REDACTED] stated on April 29, 2016, "the subject, [REDACTED] nor [REDACTED] never resided within her home. She occupies the entire house at [REDACTED]." The subject's reported address [REDACTED] did not exist. Respondent did not refute the statement but stated, that her sister's address was the only established address in the family.

She was asked if she had permission from the court to allow the children to stay with their mother in August of 2015. She said no, but she went with the children to Las Vegas. She claimed she was back and forth between Michigan and Nevada. The IG-311 EBT transaction report shows purchases in Nevada part of June, July and August of 2016. The subject stated her guardianship rights did not end until February of 2016. The importance of accuracy and the 10-day reporting policy were explained. Respondent was told that the children were on their mother's Nevada welfare case. They were also receiving benefits in Michigan. The subject claimed she did not know the children's mother applied and received assistance. She stated that [REDACTED] did not

have legal custody of her children at the time. Respondent was asked why she did not wait for the court order before releasing the girls. She concluded that [REDACTED]'s home was appropriate and returned the children.

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 benefits in the amount of \$3,804.
3. Respondent did receive an over issuance of Medical Assistance Program Benefits in the amount \$2,777.82.

The Department is ORDERED to initiate recoupment/collection procedures for \$6,581.82 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program (FAP) 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 Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Dora Allen
14061 Lappin
Detroit, MI 48205

Wayne County (District 76), 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]