



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED], NV [REDACTED]

Date Mailed: October 1, 2019
MOAHR Docket No.: 19-004973
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

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 Regulations, particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on September 11, 2019, from Lansing, Michigan.

The Department was represented by Recoupment Specialist Christina Herrod of the Office of Inspector General (OIG). Ms. Herrod testified on behalf of the Department. The Department submitted 111 exhibits which were admitted into evidence.

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). The record was closed at the conclusion of the hearing.

ISSUES

1. Did Respondent receive an overissuance of 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 receiving FAP benefits?
4. Did Respondent receive an overissuance of Medicaid benefits that the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on May 3, 2019 to establish an overissuance of FAP and Medicaid benefits received by Respondent as a result of Respondent moving to Texas and failing to report her earned income, and, as such, allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving FAP benefits.
3. Respondent was a recipient of FAP, and Medicaid benefits issued by the Department.
4. Respondent submitted an Assistance Application on [REDACTED] [REDACTED] 2015, listing her address as [REDACTED], MI. [Dept. Exh. 12-41].
5. Respondent submitted a Redetermination on [REDACTED] [REDACTED] 2015 and did not report a change in address or employment. [Dept. Exh. 42-47].
6. On January 5, 2016, the Department mailed Respondent a Notice of Case Action indicating that she had been approved for monthly FAP benefits of \$357.00 a month from February 1, 2016 through January 31, 2017. [Dept. Exh. 48-51].
7. On [REDACTED], 2016, Respondent submitted a Redetermination indicating that she had no earned income and no change of address. [Dept. Exh. 52-59].
8. On August 16, 2016, the Department received Verification of Employment from [REDACTED] in [REDACTED] Michigan, indicating that Respondent was employed at [REDACTED] and had been employed since [REDACTED] [REDACTED] 2015. [Dept. Exh. 60-63].
9. On [REDACTED] [REDACTED] 2018, Respondent submitted an application for FAP benefits indicating that she resided in [REDACTED] Michigan, and was moving to [REDACTED] Michigan, effective [REDACTED] [REDACTED] 2018. Respondent indicated she was unemployed. [Dept. Exh. 64-68].
10. An Electronic Benefit Transaction (EBT) history of Respondent's FAP purchases showed she began using her EBT card in Texas on April 15, 2018 through May 20, 2018, and in Nevada from June 19, 2018 through October 29, 2018, which indicated she was no longer living in Michigan. [Dept. Exh. 69-76].
11. On February 13, 2019, the Department received information from the Work Number which indicated that Respondent worked for the [REDACTED] [REDACTED] in [REDACTED]

Texas from April 16, 2018 through June 1, 2018. Further the Work Number revealed Respondent was working at [REDACTED] [REDACTED] in [REDACTED], Nevada, and had started her employment on [REDACTED] [REDACTED] 2019. [Dept. Exh. 77-81].

12. Respondent was aware of the responsibility to report changes in her residence and employment to the Department.
13. Respondent had no apparent physical or mental impairments that would limit the understanding or ability to fulfill this requirement.
14. The OIG indicates that the time period they are considering the fraud periods are December 1, 2015 through August 31, 2016, and July 1, 2018 through October 31, 2018. [Dept. Exh. 4].
15. During the fraud period of December 1, 2015 through August 31, 2016, Respondent was issued \$3,000.00 in FAP benefits from the State of Michigan when she was only entitled to \$222.00, resulting in a \$2,778.00 overissuance. [Dept. Exh. 4, 89-90].
16. During the fraud period of July 1, 2018 through October 31, 2018, Respondent was issued \$1,409.00 in FAP benefits from the State of Michigan to which she was not entitled. [Dept. Exh. 83-85].
17. During the fraud period of July 1, 2018 through October 31, 2018, Respondent received \$1,736.58 in Medicaid benefits from the State of Michigan to which she was not entitled. [Dept. Exh. 86-88].
18. This was Respondent's **third** FAP IPV. [Dept. Exh. 1-3].
19. A notice of hearing was mailed to Respondent at the last known address of [REDACTED] [REDACTED], Nevada, 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), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services 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 of Health and Human Services (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.

Effective October 1, 2017, the Department's Office of Inspector General requests Intentional Program Violation hearings for the following cases:

1. FAP trafficking overissuances that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or Food Assistance Program trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA) and Food Assistance Program (FAP) programs combined is \$500 or more, or
 - the total amount is less than \$500, and
 - the group has a previous Intentional Program Violation, or
 - the alleged Intentional Program Violation involves Food Assistance Program 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 (10/1/2017).

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 his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. 7 CFR 273.16(c); BAM 720, p 1 (emphasis in original).

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(c). 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 shows that Petitioner was employed at [REDACTED] in [REDACTED] Michigan, as of [REDACTED] 2016 and had been so employed since [REDACTED] 2015. Petitioner failed to report this earned income to the Department. Petitioner also worked at the [REDACTED], Texas, from [REDACTED], 2018 through [REDACTED] 2018.

The Department has established by clear and convincing evidence that Respondent failed to notify the Department that she was working at [REDACTED] while receiving FAP benefits resulting in her receiving more FAP and Medicaid benefits than she was otherwise entitled to.

Further, the Department established by clear and convincing evidence that Respondent failed to notify the Department that she was living and working in Texas while continuing to receive FAP benefits from the State of Michigan. She also received \$1,736.58 in Medicaid benefits that the Department is entitled to recoup. Therefore, the Department has established an Intentional Program Violation.

Disqualification

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

A client who is found to have committed an Intentional Program Violation by a court or hearing decision is disqualified from receiving program benefits. 7 CFR 273.16(b)(1); 7 CFR 273.16(b)(5); 7 CFR 273.16(b)(11); BAM 720, p 16. Clients are disqualified for ten years for a Food Assistance Program Intentional Program Violation involving concurrent receipt of benefits, and, for all other Intentional Program Violation cases involving Family Independence Program, Food Assistance Program or State Disability Assistance, for standard disqualification periods of one year for the first Intentional Program Violation, two years for the second Intentional Program Violation, and lifetime

for the third Intentional Program Violation or conviction of two felonies for the use, possession, or distribution of controlled substances in separate periods if both offenses occurred after August 22, 1996. 21 USC 862a; 7 CFR 273.1(b)(7)(vii); 7 CFR 273.11(m); 7 CFR 273.11(c)(1); BEM 203, p 2; BAM 720, p 16. A disqualified member may continue as the grantee **only if** there is no other eligible adult in the group. BAM 720, p 17 (emphasis in original).

Respondent's signature on the applications dated February 10, 2015 and April 5, 2018, in addition to the redetermination on July 20, 2016, certifies that she was aware that fraudulent participation in FAP and Medicaid could result in criminal or civil or administrative claims. In this case, Respondent received FAP and Medicaid benefits from Michigan while residing in Texas. Because this was Respondent's third FAP IPV, Respondent is disqualified for life from receiving FAP benefits.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuances. BAM 700, p 1 (1/1/2018); 7 CFR 273.18.

In this case, Respondent received a total of \$4,187.00 in FAP benefits to which she was not entitled because she was no longer a resident of Michigan. This resulted in an overissuance of \$4,187.00 for the FAP fraud periods of December 1, 2015 through August 31, 2016 and July 1, 2018 through October 31, 2018, which the Department is entitled to recoup.

Further, Respondent also received \$1,736.58 in Medicaid benefits to which she was not entitled due to her no longer residing in Michigan. As such, she received an overissuance of \$1,736.58 for the Medicaid fraud period of July 1, 2018 through October 31, 2018, to which the Department is entitled to recoup.

DECISION AND ORDER


Therefore, this 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 a third FAP IPV.
2. Respondent did receive an overissuance of FAP benefits in the amount of \$4,187.00.
3. Respondent did receive an overissuance of Medicaid benefits in the amount of \$1,736.58.

The Department is ORDERED to initiate recoupment/collection procedures for the FAP overissuance amount of \$4,187.00 and the Medicaid overissuance amount of \$1,736.58, for a total of \$5,923.58 in accordance with Department policy.

It is FURTHER ORDERED that Respondent serve a lifetime disqualification from participation in the Food Assistance Program.

VLA/nr



Vicki L. Armstrong
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

Kimberly Kornoelje
121 Franklin SE
Grand Rapids, MI
49507

Kent 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], NV