



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: December 10, 2019
MOAHR Docket No.: 19-008220
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 August 25, 2019, from ██████████ Michigan. The Department was represented by James Linaras, 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).

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 FAP benefits for 12 months?

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 July 19, 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 program benefits.
3. Respondent was a recipient of FAP and MA benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in residency to the Department within 10 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 June 1, 2017 through September 30, 2018 (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
9. During the fraud period, Respondent was issued \$ [REDACTED] in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
10. The Department alleges that Respondent received an OI in MA benefits in the amount of \$ [REDACTED]
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.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking overissuances 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 \$500.00 or more, or
 - the total amount is less than \$500.00, 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 (October 2017), pp. 12-13.

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.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld, misrepresented information, or withheld facts or committed any act constituting a violation of Supplemental Nutritional Assistance Program (SNAP) regulations or State statutes for the **purpose** of establishing, maintaining, using, presenting, transferring, receiving, possessing, trafficking, increasing or preventing reduction of program benefits or eligibility. BAM 720, pp. 1, 12-13 (emphasis in original); 7 CFR 273.16(c) and (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.

In this case, the Department seeks an IPV due to the Respondent's out-of-state use of his Michigan FAP benefits alleging that Respondent failed to report his change in residency outside of Michigan; and thus, he was not entitled to Michigan FAP benefits.

In support of its allegations the Department presented a FAP transaction history to establish that Respondent used all of his Michigan issued FAP benefits exclusively in Florida from November 7, 2017 through September 8, 2018. The Department also presented evidence to show that Respondent was employed in Florida with [REDACTED] on April 27, 2017; August 10, 2017 through November 16, 2017; and May 10, 2018 through July 12, 2018. Evidence provided also showed that Respondent was employed in Florida with [REDACTED] [REDACTED] from May 4, 2017 August 17, 2017; and January 18, 2018 through August 9, 2018.

Federal Regulations provide with respect to FAP recipient's residency requirements state that:

- (a) *A household shall live in the State in which it files an application for participation.* The State agency may also require a household to file an application for participation in a specified project area (as defined in § 271.2 of this chapter)

or office within the State. No individual may participate as a member of more than one household or in more than one project area, in any month, unless an individual is a resident of a shelter for battered women and children as defined in § 271.2 and was a member of a household containing the person who had abused him or her. Residents of shelters for battered women and children shall be handled in accordance with § 273.11(g). *The State agency shall not impose any durational residency requirements.* The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. *Nor shall residency require an intent to reside permanently in the State or project area.* Persons in a project area solely for vacation purposes shall not be considered residents.

7 CFR 273.3 (emphasis added). Based upon the above residency federal regulation, there is no requirement that an eligible household reside in Michigan, except at the time of application. In addition, there is no requirement that residency be based upon the recipient's intent to reside permanently in Michigan. The Department did not present any evidence that Respondent misrepresented his address on any application or redetermination with the State of Michigan. The Department cited no federal requirement or regulation that prohibits out of state use of Michigan FAP benefits by a recipient.

Department policy BEM 220 requires that a person be a Michigan resident for FAP eligibility and provides that a person is 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. BEM 220 (April 2018), p. 1. In order to be in compliance with the federal regulations, this rule can only apply at application. No evidence was presented that Respondent lacked Michigan residency at application and the Department conceded that this was not a concern. Department policy BEM 212 also defines a temporary absence from a group as having lasted or expecting to last 30 days or less. BEM 212 (January 2017), p. 3. The Department has utilized BEM 212 to establish a loss of residency, but it does not discuss residency, the policy discusses a removal from a group. In order for BEM 212 to be in compliance with federal regulations, it cannot apply to residency. BEM 212 can only apply to the group, especially because after application since there is no federal requirement to maintain a residence in any given state. A FAP recipient is free to use their FAP benefit in any state. So long as there was no misrepresentation of residency at the time of application, there can be no IPV for failure to maintain Michigan residency or failure to inform the Department about a change in residency.

Based upon the foregoing, the Department has not established that Respondent committed an IPV of the FAP program by clear and convincing evidence based upon a failure to report a change in residency in the FAP.

The rules regarding residency are different for FAP cases than they are in MA cases. A Medicaid recipient, must be a Michigan resident which is defined as an individual who is living in Michigan except for a temporary absence. BEM 220, p. 2. 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. BEM 220, p. 2. As an example, policy allows that individuals who spend the winter months in a warmer climate and return to their homes in spring, remain Michigan residents during the winter months. BEM 220, p. 2.

The Department has shown that Respondent was using his FAP benefits outside of Michigan for an extended period. The Department also presented evidence that Respondent no longer lived at the address from his most recent application. Respondent's absence from his former residence is not indicative of Respondent's residency in Florida or Michigan for the relevant period. However, Respondent's exclusive use of FAP benefits outside of Michigan shows that he was absent from Michigan for such an extended period that he lost his Michigan residency for MA purposes unless Respondent can show that the absence was temporary. Respondent did not appear at the hearing to explain his absence. In addition, Respondent had an obligation to report his change in circumstances to the Department within ten days of the change itself. He was informed of this obligation at the time of his application. Respondent's failure to inform the Department of the change is an IPV of the MA program.

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 he/she 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 or FAP. BAM 720, p. 16. 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 10 years for a FAP concurrent receipt of benefits. BAM 720, p. 16; 7 CFR 273.16(b)(1); 7 CFR 273.16(b)(11).

As discussed above, the Department has not satisfied its burden of proof in establishing an IPV of the FAP. Therefore, the Respondent is not subject to a period of disqualification of FAP benefits.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6; 7 CFR 273.18(c)(1).

FAP Overissuance

In this case, the Department sought the imposition of an IPV due to Respondent's lack of Michigan residency. As discussed above, the Department failed to establish that Respondent was ineligible for FAP due to lack of residency and did not establish an IPV. FAP clients are permitted the use of their FAP EBT benefits anywhere that SNAP benefits are accepted. Therefore, the Department has not established an OI or that the Respondent received more benefits than he was entitled to receive.

Medical Assistance Overissuance

The Department initiates MA recoupment of an overissuance (OI) due to client error or intentional program violation (IPV), not when due to agency error. BAM 710 (January 2018), p. 1. For an OI due to any other reason other than unreported income or a change affecting need allowances, the OI amount is the amount of MA payments. BAM 710, p. 2.

In this case, the Department alleges that an OI was present due to client error regarding Respondent's MA benefits. The Department alleges that Respondent failed to notify the Department that he no longer resided in Michigan during the OI period June 1, 2017 through September 30, 2018, but that he continued to receive MA benefits from Michigan while she was out of state. As discussed above, Respondent had an obligation to report changes in his residency for purposes of MA benefits but failed to report the change resulting in an IPV and a client error.

The Department established through capitation reports that Respondent was issued \$ [REDACTED] in MA benefits. Since Respondent was not living in Michigan, did not report his change in residency, and failed to appear at the hearing to establish that his absence from Michigan was temporary, the Department has met its burden of proof in establishing an OI of MA benefits. The Department may recoup or collect the MA OI of \$ [REDACTED]

DECISION AND ORDER

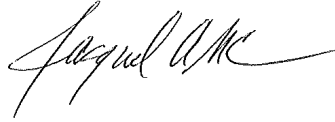
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department **has not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **received** an OI of MA program benefits in the amount of \$ [REDACTED] from the MA.
3. Respondent **did not receive** an OI of FAP program benefits.

The Department is ORDERED to delete the FAP OI and cease any recoupment action.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$[REDACTED] for the MA program in accordance with Department policy.

It is FURTHER ORDERED that Respondent is not subject to a period of disqualification from FAP benefits.



JAM/jaf

Jacquelyn A. McClinton
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 (via electronic mail)

Deborah Little
MDHHS-[REDACTED]-Hearings
L Bengel
Policy Recoupment

Petitioner (via electronic mail)

MDHHS-OIG-Hearings

Respondent (via first class mail)

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