



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]

Date Mailed: November 26, 2019
MOAHR Docket No.: 19-010085
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 November 21, 2019 from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and represented herself. During the hearing, a 144-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-144.

ISSUES

1. Did Respondent receive an overissuance (OI) of Medicaid (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) with respect to Food Assistance Program (FAP) and MA?
3. Should Respondent be disqualified from receiving FAP benefits?

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] 2013, Respondent submitted to the Department an application for FAP and MA benefits for household, which included herself and her adult son,

- ██████████ Respondent signed the application, thereby certifying the truth of the information provided. Exhibit A, pp. 13-28.
2. On ██████████ 2014, Respondent submitted to the Department an application for MA and State Emergency Relief benefits for her household, which included herself and her adult son, ██████████. On the application, Respondent indicated that ██████████ had income from his employment. Exhibit A, pp. 29-47.
 3. Respondent signed the application, certifying the truth of the information in the application and that she received, read, and understood her rights and responsibilities under the programs. Included in the information Respondent acknowledged receiving was a publication titled Things You Must Do. The Things You Must Do publication informed Respondent that she must be truthful in all her statements to the Department and must report changes to the Department, including change in income and employment, within ten days of the change. Exhibit A, pp. 46-47.
 4. On or about July 9, 2014, Respondent began working at ██████████. Her first paycheck was issued on July 17, 2014. Respondent regularly worked full-time or near full-time hours from that time through at least some time in 2019. Exhibit A, pp. 106-109.
 5. On July 15, 2014, Respondent called the Department to report the change in household income. Her worker did not answer, so she left a message. On the message, Respondent informed her worker that she began working for ██████████ and that Mr. ██████████ was still working.
 6. On July 22, 2014, the Department issued to Respondent a Notice of Case Action informing Respondent that she was approved for FAP benefits of \$357 per month. For some reason, the Department was not budgeting any wages despite Respondent's disclosure of income on the ██████████ 2014 application and the July 15, 2014 telephone call. Exhibit A, pp. 48-55.
 7. On July 31, 2014 and August 22, 2014, the Department issued to Respondent Health Care Coverage Determination Notices informing Respondent that both she and Mr. ██████████ were approved for MA benefits. Notably, those documents contain no indication of what the Department based its decision on or even what kind of coverage is being provided. Exhibit A, pp. 56-61.
 8. Respondent continued to be covered by MA and receive FAP benefits without respect to the reported change in income. Exhibit A, pp. 63-67; 110-141.
 9. On September 16, 2019, the Department's OIG filed a hearing request to establish an IPV with respect to FAP and MA. The Department considers the alleged fraud period to be September 1, 2014 through July 31, 2015. During that time, the

Department issued to Respondent \$3,917 in FAP benefits. The Department asserts that Respondent was entitled to only \$246 of FAP benefits during that time. Prior to the hearing in this matter, the Department had already established that Respondent received a \$3,671 overissuance of FAP benefits. The Department seeks an order finding that Respondent committed an IPV with respect to FAP and disqualifying Respondent from receiving FAP benefits for a period of one year for a first IPV. During the alleged fraud period, the Department expended \$10,307 in MA benefits on Respondent's behalf. The Department asserts that Respondent was entitled to MA benefits totaling \$3,111 during that time period. Thus, the Department's hearing request sought to establish an overissuance of MA benefits of \$7,196. Exhibit A, pp. 1-10; 110-144.

10. 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.

The Department's position is that Respondent committed an IPV with respect to FAP and MA by allegedly failing to report when she and Mr. [REDACTED] began employment, causing the Department to overissue Respondent FAP and MA benefits for the period from September 1, 2014 through July 31, 2015. The Department has already established the overissuance with respect to FAP but is seeking to establish an overissuance of MA benefits in this action as well as a one-year disqualification from receiving FAP benefits.

INTENTIONAL PROGRAM VIOLATION

The Department's policy in effect at the time of Respondent's alleged IPV defined an IPV as an overissuance in which the following three conditions exist: (1) the client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination; (2) the client was clearly and correctly instructed regarding his or her reporting responsibilities; and (3) the client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill his or her reporting responsibilities. BAM 720 (July 2013), p. 1; 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. BAM 720, page 1; see also 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)).

Respondent was required to report changes in her household's circumstances to the Department within 10 days of the date of the change. BAM 105 (October 2016), pp. 11-12. The Department alleges that Respondent breached this duty by failing to report that both she and Mr. ██████ began working and that the breach amounted to an IPV.

The Department, however, has not met its burden of proof in this matter. Respondent credibly testified that she, in fact, did tell the Department that she and Mr. ██████ were working during a July 15, 2014 telephone message left for her worker. For some reason, Respondent's reported changes were not properly processed or otherwise looking into by the Department. However, that was through no fault of Respondent's. Thus, Respondent met her reporting requirements. Accordingly, the Department failed to meet its burden of showing by clear and convincing evidence that Respondent committed an IPV with respect to FAP or MA by either making a false statement or intentionally failing to report a change.

OVERISSUANCE

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (July 2013), p. 1; 7 CFR 273.18. When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1; 7 CFR 273.18.

FAP Overissuance

In this case, Respondent received more benefits than she was entitled to receive. The Department determined Respondent's FAP eligibility without budgeting Respondent's

wages from her employment with [REDACTED] or Mr. [REDACTED] wages from his employment with [REDACTED] which caused the household's income to be understated. When factored into the calculation, the unreported income reduced the amount of FAP benefits that Respondent was eligible to receive. Prior to the hearing in this matter, the Department had already established that Respondent was overissued \$3,671 of FAP benefits from September 1, 2014 through July 31, 2015.

MA Overissuance

Respondent received more MA benefits than she was entitled to receive. The Department determined Respondent's eligibility without budgeting the household's income from each member's employment, which caused Respondent's income to be understated. When factored into the equation, Respondent and Mr. [REDACTED] were not eligible to receive nearly the value of benefits they received. Thus, the Department has established that Respondent received MA coverage that she was not entitled to receive. Between Respondent and Mr. [REDACTED], the Department overissued MA benefits totaling \$7,196 from September 1, 2014 through July 31, 2015.

However, the Department may only initiate recoupment of an overissuance due to client error or an intentional program violation, not when the overissuance is due to agency error. BAM 710 (October 2016), p. 1. An agency error overissuance is an overissuance caused by incorrect actions of the Department, including the Department's failure to properly use available information. BAM 705 (January 2016), p. 1.

In this case, Respondent credibly testified that she placed a telephone call to the Department on July 15, 2014 and left a voicemail informing her worker that both she and Mr. [REDACTED] were working. However, for some reason, the Department failed to process the change report and simply continued to provide the coverage it was previously providing. Under these circumstances, the overissuance was caused by the Department's failure to act on available information regarding the household members' return to work. As such, the overissuance is an agency error overissuance, and the Department is prohibited by policy from pursuing the overissuance from Respondent.

DISQUALIFICATION

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving FAP benefits. BAM 720, pp. 15-16; 7 CFR 273.16(b). In general, clients are disqualified for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16.

In this case, there is no IPV related to FAP benefits. Thus, Respondent is not subject to a one-year disqualification from receiving FAP benefits.

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 with respect to his FAP and MA benefits.
2. The Department has not established by clear and convincing evidence that Respondent received an overissuance of MA benefits that the Department is entitled to recoup and/or collect.
3. Respondent is not subject to a one-year disqualification from receiving FAP benefits.

IT IS ORDERED that the Department shall delete the alleged September 1, 2014 through July 31, 2015 MA overissuance from Respondent's case.

JM/TM



John Markey
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

Petitioner

OIG
PO Box 30062
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48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

cc: IPV-Recoupment Mailbox
L. Bengel