



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: February 13, 2020
MOAHR Docket No.: 19-011016
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 February 10, 2020 from Detroit, Michigan. The Department was represented by Amber Johnson, Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear. The hearing 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). During the hearing, a 62-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-62.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and/or 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 FAP and/or MA?
3. Should Respondent be disqualified from receiving FAP benefits, and if so, for how long?

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] 2017, Respondent submitted to the Department an application for FAP and MA benefits for himself. Exhibit A, pp. 10-39.
2. Respondent signed the application. By signing the application, Respondent certified that the information on the application was true and complete to the best of his knowledge. Furthermore, Respondent acknowledged that failing to be truthful could result in penalties, including disqualification from future benefits and a requirement to repay the benefits received. Respondent further acknowledged that he received, read, and understood the instructions provided in the Important Things to Know and Things You Must Do pamphlets. Included in those pamphlets is an instruction to report any changes to residency or income within ten days of the change and that failure to do so could result in fraud proceedings being initiated against him. Exhibit A, pp. 21-23.
3. Respondent's application was approved, and Respondent thereafter received FAP benefits. Exhibit A, pp. 58-59.
4. No evidence was presented to show that Respondent ever received any MA benefits from the Department.
5. On [REDACTED], 2017, Respondent submitted to the State of Minnesota an application for FAP benefits. On the application, Respondent certified that he moved to Minnesota from Michigan in [REDACTED] 2017 and dishonestly stated that he was not receiving any benefits from any other state. Respondent signed the application, thereby certifying the truth of his assertions under penalty of perjury. Exhibit A, pp. 44-53.
6. Respondent's Minnesota application was approved. He received FAP benefits from the date of application through at least December 2017. Exhibit A, pp. 54-57.
7. Starting May 20, 2017 and continuing through at least February 20, 2018, Respondent's Department-issued FAP benefits were redeemed exclusively outside the state of Michigan. All of Respondent's purchases with the Minnesota-issued FAP benefits were redeemed in Minnesota. Exhibit A, pp. 54-57; 60-62.
8. The Department's OIG filed a hearing request on [REDACTED], 2019 to establish an overissuance of FAP and MA benefits received by Respondent as a result of Respondent having allegedly committed an IPV by failing to report his move to Minnesota. Exhibit A, pp. 1-8.
9. This was Respondent's first alleged IPV. Exhibit A, pp. 1-8.
10. The OIG requested that Respondent be disqualified from receiving FAP benefits for a period of one year. Exhibit A, pp. 1-8.

11. The Department's OIG indicates that the alleged fraud period with respect to FAP benefits is June 1, 2017 through September 30, 2017 (fraud period), during which the Department issued Respondent \$[REDACTED] in FAP benefits. With respect to MA, the alleged fraud period is June 1, 2017 through September 30, 2017, during which the Department allegedly expended \$[REDACTED] in MA benefits for Respondent's benefit. As the Department contends Respondent was not a Michigan resident, the Department believes Respondent was not entitled to any of the benefits issued during the alleged fraud period. Exhibit A, pp. 1-8; 58-59.
12. A Notice of Hearing was mailed to Respondent at the last known address 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), Bridges Eligibility Manual (BEM), 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 in this matter is that Respondent failed to report a change to his residency in order to continue to receive FAP and MA benefits from the Department that he was not eligible to receive. Respondent subsequently filed for benefits from the State of Minnesota, resulting in Respondent receiving dual assistance for a period of time.

Overissuance

Only residents of Michigan are eligible to receive benefits from the Department. BEM 220 (January 2016), p. 1; 7 CFR 273.18. Furthermore, an individual must live in the state in which he or she files the application for FAP benefits. 7 CFR 273.3. "A household certified to participate in the [FAP] is required to report in a manner

prescribed by the [Department] if the household no longer resides in the State in which it is certified.” 7 USC 2014a. Once the Department determines, based on reliable information, that a household is no longer a resident of the state, the Department “shall not delay terminating the household’s participation in order to provide advance notice.” 7 CFR 273.13(b)(13). Additionally, an individual is prohibited from receiving duplicate assistance from more than one state. BEM 222 (October 2018), p. 1. When an ineligible client is issued benefits or an eligible client is issued more benefits than the client is entitled, the Department must attempt to recoup the OI. BAM 700 (January 2016), p. 1; 7 CFR 273.18.

In this case, the Department showed by clear and convincing evidence that Respondent received more FAP benefits than he was entitled to receive. As of April 2017 at the latest, Respondent was no longer a Michigan resident. This conclusion is based on the facts that Respondent’s Michigan-issued FAP benefits were not used in Michigan after April 2017 and Respondent’s statement on the [REDACTED], 2017 Minnesota application stating that he was no longer a Michigan resident as of March 2017.

Thus, based on the information presented, Respondent was not a Michigan resident and was ineligible to receive benefits from the Department from at least June 1, 2017 through the end of the alleged fraud period. However, because of Respondent’s failure to inform the Department of his move, the Department issued to Respondent FAP benefits of \$ [REDACTED] from June 1, 2017 through September 30, 2017. As Respondent was ineligible to receive those benefits, they are considered an overissuance. In total, the FAP overissuance was \$ [REDACTED]

While Respondent was also ineligible to receive MA benefits from the Department during that same time period, the Department failed to establish that it, in fact, did dispense any MA benefits to Respondent. As the Department failed to establish that Respondent received any MA benefits during the alleged fraud period, it necessarily failed to establish that Respondent received an overissuance of MA benefits during that time. Accordingly, the Department must delete the alleged MA overissuance of \$ [REDACTED] from Respondent’s case.

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 (January 2016), 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 his group's circumstances, including residency changes, to the Department within 10 days of the date of the change. BAM 105 (January 2018), pp. 11-12; 7 CFR 273.12(a)(1)-(2). The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent failed to report that he moved to Minnesota.

Respondent's failure to report the change to the Department must be considered an intentional misrepresentation to receive benefits he was not entitled to from Michigan since Respondent knew or should have known that he could only receive FAP benefits from his state of residence. It is clear that Respondent had an intent to deceive the Department regarding his residency. Respondent sought to maximize his monthly FAP benefits by defrauding Michigan into issuing benefits he was not entitled to. Further bolstering that conclusion is the fact that Respondent used his FAP benefits from the Department and from Minnesota simultaneously. The Department has proven by clear and convincing evidence that Respondent committed an Intentional Program Violation with respect to FAP.

With respect to MA, the Department again failed to meet its burden of proof. There is no evidence that Respondent was even receiving MA during the relevant time period.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving FAP and FIP 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. A ten-year disqualification is imposed if a client makes a fraudulent statement or representation regarding residence in order to receive concurrent benefits from more than one state. BAM 720, p. 16; BEM 203 (January 2018), p. 1; 7 CFR 273.16(b)(5).

There is no evidence that Respondent has committed a previous IPV with respect to FAP benefits. Therefore, Respondent is subject to a one-year disqualification from receiving FAP benefits for a first-time IPV. The Department requested a ten-year disqualification. However, there is no evidence of a false statement made to the Department by Respondent. Therefore, the ten-year disqualification is not applicable.

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 established by clear and convincing evidence that Respondent committed an IPV with respect to his FAP benefits.
2. Respondent is subject to a one-year disqualification from receiving FAP benefits.
3. Respondent received an overissuance of FAP benefits in the amount of \$[REDACTED] that the Department is entitled to recoup and/or collect.
4. Respondent did not receive an overissuance of MA benefits that the Department is entitled to recoup and/or collect.

IT IS ORDERED that Respondent shall be disqualified from receiving FAP benefits for a period of one year.

IT IS FURTHER ORDERED that the Department may initiate recoupment and/or collection procedures for the FAP overissuance amount of \$[REDACTED] established in this matter less any amounts already recouped or collected.

IT IS FURTHER ORDERED that the Department must delete the alleged MA overissuance of [REDACTED]

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

LaClair Winbush
17455 Grand River
Detroit, MI
48227

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

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

cc: IPV-Recoupment Mailbox
L. Bengel