



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: March 10, 2020
MOAHR Docket No.: 19-013577
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 March 5, 2020 from Detroit, Michigan. The Department was represented by Stephanie Janowiak, 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) Program 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?

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 November 14, 2019 seeking 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 benefits.
3. Respondent and her children were recipients of FAP and MA benefits issued by the Department.
4. Respondent and her children were recipients of FAP and MA benefits issued by the State of Kentucky.
5. Respondent and her children received concurrent benefits from Michigan and Kentucky for food assistance and medical assistance.
6. Respondent **was** aware of the responsibility to report changes in household circumstances to the Department including changes in address and residency.
7. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
8. The Department's OIG indicates that the time periods it is considering the fraud period are September 2017 through June 2018 for the MA program and January 2018 through May 2018 for FAP (fraud period).
9. During the fraud period, Respondent was issued \$1,760.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$352.00 in such benefits during this time period.
10. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,408.00.
11. During the fraud period, the Department issued \$5,634.29 in MA benefits on behalf of Respondent and her children.
12. The Department alleges that Respondent was not entitled to the benefits of these payments and is responsible for an MA OI in the amount of \$5,634.29.
13. This was Respondent's **first** alleged IPV.
14. 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 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 \$500.00 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. 5, 12-13; ASM 165 (August 2016).

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.

BAM 700 (October 2018), p. 8; 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 alleges that Respondent committed an IPV of FAP and MA programs because Respondent received concurrent benefits in Michigan and Kentucky.

Federal Regulations provide with respect to FAP recipients residency requirements 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).

Policy also provides with respect to MA benefits that to be eligible for MA benefits, a person must be a Michigan resident. BEM 220 (January 2016), p. 1. A person is considered a resident of Michigan when the individual 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. However, in all types of assistance, clients are prohibited from receiving the same type of benefit from Michigan and another state at the time same time. BEM 222 (October 2016), p. 1.

To support its case, the Department presented Respondent's Michigan Application for FAP, MA, and Family Independence Program (FIP) benefits dated [REDACTED], 2017, on which she indicated that she lived in Michigan. By signing this Application, Respondent acknowledged her understanding that she must report changes in household circumstances to the Department within ten days of the change itself. After the Application was processed, the Department issued a Notice of Case Action to Respondent informing her that she was eligible for Michigan issued FAP benefits in the amount of \$357.00 per month effective April 2017 through March 2018. The notice also reminded her of her responsibility to report changes and provided her a Change Report to facilitate that process. On April 28, 2017, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Respondent informing her that she was eligible for full coverage MA benefits effective May 1, 2017 and again reminded her of the responsibility to report changes.

On February 20, 2018, the Department received Respondent's completed Redetermination which did not reflect any changes in residency or address. Based upon the information provided, Respondent and her children received MA benefits from September 2017 through June 2018. They also received FAP benefits in the amount of \$352.00 per month from January 2018 through May 2018.

In April 2018, the Department was alerted to a potential issue with Respondent's residency or receipt of dual benefits via a PARIS Match. During the investigation, the Department determined that Respondent had been using her Michigan-issued FAP benefits exclusively in Kentucky from August 3, 2017 through October 6, 2017; October 11, 2017 through January 15, 2018; and April 11, 2018 through May 22, 2018. Upon further investigation, the Department contacted the State of Kentucky and was informed that Respondent had been issued Kentucky food assistance benefits from January 4, 2018 through October 31, 2019; medical assistance from September 2017 through November 2018 for herself; and MA for her children from September 2017 through October 2019.

According to all Department records, Respondent never reported her receipt of food assistance or medical assistance benefits from Kentucky.

Respondent was advised of the responsibility to truthfully and accurately answer all questions on the Application for benefits. She was also advised of the responsibility to report changes in household circumstances to the Department via multiple sources. Respondent failed to report her receipt of Kentucky food and medical benefits to Michigan. The most reasonable explanation for her failure to report receipt of Kentucky benefits was so that she could receive benefits from both states at the same time. Therefore, the Department has satisfied its burden of proof by clear and convincing evidence that Respondent committed an IPV.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15. Clients are disqualified for 10 years for a FAP IPV involving concurrent receipt of benefits if the client made fraudulent statements regarding their identity or residency. BAM 720, p. 16; 7 CFR 273.16(b)(1) and (5). For all other IPV cases involving FAP, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. *Id.* A disqualified recipient 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. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV. However, in reviewing the evidence, the Department failed to show that Respondent committed the IPV by intentionally misrepresenting her identity or residency; therefore, the 10-year disqualification is not applicable. Furthermore, the Department conceded that Respondent was living in Michigan at the time of her Michigan Application and Redetermination. No evidence was presented of a prior IPV. Therefore, she is subject to a one-year disqualification under the FAP.

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 (October 2017), p. 6; BAM 705 (October 2018), p. 6; 7 CFR 273.18(c)(1).

In this case, the Department alleged a \$1,408.00 FAP OI for January 2018 through May 2018 based upon concurrent receipt of benefits. Since Respondent received Kentucky-issued food benefits from January 2018 through October 2019, Respondent received dual benefits that she was not entitled to receive. To determine the first month of the overissuance period the Department allows time for: (i) the 10-day client reporting period, per BAM 105; (ii) the 10-day full standard of promptness (SOP) for change processing, per BAM 220; and (iii) the 12-day full negative action suspense period; see BAM 220, Effective Date of Change. BAM 715, pp. 4-5. Respondent first received

Kentucky benefits effective January 1, 2018; therefore, she should have reported the change to the Department by January 11, 2018; the Department should have processed the change by January 21, 2018; and the 12-day negative action suspense period would apply until February 2, 2018. After application of these rules, the change would not have been effective until March 1, 2018. Any OI attributable to January and February 2018 is removed from the total FAP OI. The adjusted FAP OI is \$1,056.00 based upon the Benefit Summary Inquiry provided by the Department showing receipt of \$352.00 in FAP benefits in Michigan from March 2018 through May 2018.

The Department initiates MA recoupment of an overissuance (OI) due to client error or IPV, not when due to agency error. BAM 710 (October 2016), p. 1. When the Department receives the amount of MA payments, it determines the OI amount. BAM 710, p. 1. For an OI due to any reason other than unreported income or a change affecting need allowances, the OI amount is the amount of MA payments. BAM 710, p. 2.

As indicated above, Respondent committed an IPV by failing to disclose her receipt of Kentucky MA benefits. When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

As discussed above, the 10-day reporting, 10-day processing, and 12-day negative action suspense period must be applied. Respondent and her children received the benefit of Michigan-issued MA benefits beginning September 1, 2017 and it continued until June 2018. Respondent also received the benefit of Kentucky-issued MA benefits from September 2017 through November 2018; however, her children received the benefit from September 2017 through October 2019. The Department sought to recoup the MA benefits received by each member of the family from September 2017 through June 2018 totaling \$5,634.29. Since the 10-day reporting, 10-day processing, and 12-day negative action rule apply and because Respondent did not receive Kentucky MA benefits throughout the entire period, the Department's OI calculation is incorrect. The first day that the benefits overlapped was September 1, 2017. Therefore, after application of the above rules, the OI may begin on November 1, 2017. Respondent was receiving a benefit from both Michigan and Kentucky at the time and the benefit from Michigan totaled \$312.93 based upon the Medicaid Summary Report (MSR). Respondent did not have any other months in which her MA benefits overlapped between the two states. Respondent's two children each received MA benefits from both states from November 2017 through the remainder of the fraud period. The total benefit issued on their behalf was \$2,100.60 based upon the MSR. Therefore, the total MA OI for which the Department may recoup is \$2,413.53.

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.
2. Respondent **received** an OI of FAP benefits in the amount of \$1,056.00.
3. The Department **has** established a claim for overissued MA benefits in the amount of \$2,413.53.

The Department is ORDERED to reduce the FAP OI to \$1,056.00 for the period January 2018 through May 2018, and initiate recoupment/collection procedures in accordance with Department policy.

The Department is ORDERED to reduce the MA OI to \$2,413.53 for the period September 2017 through June 2018, and initiate recoupment/collection procedures in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of **12 months**.

AMTM/jaf



Amanda M. T. Marler
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
MDHHS-Wayne-31-Hearings
L Bengel
Policy Recoupment

Petitioner

MDHHS-OIG-Hearings

Respondent

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