



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: July 13, 2018
MAHS Docket No.: 18-004221
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 June 13, 2018, from Detroit, Michigan. The Department was represented by [REDACTED], 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 (FAP) benefits that the Department is entitled to recoup?
2. Did the Respondent receive an overissuance (OI) of Medical Assistance (MA) benefits that the Department is entitled to recoup?
3. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
4. Should Respondent be disqualified from receiving benefits for Food Assistance (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 April 23, 2018, 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 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 circumstances including changes in household members no longer residing in the household.
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 for Food Assistance is January 1, 2017 through June 30, 2017 (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 [REDACTED] 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. The Department alleges that Respondent received an OI in MA benefits for her son in the amount of [REDACTED] for the period January 1, 2017 through April 30, 2017 that the Department is entitled to recoup/collect.
10. The total OI the Department seeks to recoup/collect for both FAP and MA program benefits is [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 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), 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 (January 2017), p. 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.

BAM 700 (October 2017), 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 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(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 is seeking to establish an IPV due to the Respondent's alleged failure to report that her minor son, [REDACTED] who was included in her FAP group moved out of state to Pennsylvania and was no longer residing in her household. In support of the IPV the Department presented school records from [REDACTED] in Detroit that her son was no longer enrolled after November 14, 2016. Exhibit A, p. 16. In addition, the Department presented an benefit application completed in the state of Pennsylvania dated February 14, 2017. The Respondent's son Jaheem received FAP benefits from the state of Pennsylvania from December 1, 2016 through May 31, 2017 and Medical assistance benefits from November 14, 2016 through May 31, 2017. Exhibit A, pp. 16-19. The Respondent's child began residing in Pennsylvania beginning November 14, 2016 with his stepmother who advised and confirmed that the child was with her from October 2016 through June 2017 at which time the child returned to the Respondent. The Department also submitted a benefits issuance summary to establish that Respondent was receiving FAP benefits during the period the child was absent from the household. Exhibit A, p. 36.

The Respondent applied for and was received FAP benefits and completed a redetermination on October 5, 2016 where she reported her son in the house and as he had not as yet moved until November 14, 2016. Exhibit A, pp. 10-15. There was no evidence presented that the Respondent ever falsely advised the Department but there is evidence that she did not timely report her son's absence at any time.

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. BEM 105 (December 1, 2011), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 11.

To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (7/1/14), p. 1. A person is considered a resident while living in Michigan for any purpose other than a vacation, even if he has no intent to remain in the state permanently or indefinitely. BEM 220, p. 1. A client who resides outside the State of Michigan for more than thirty days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (7/1/14), pp. 2-3.

In this case the Department did establish that the Respondent's minor child [REDACTED] was absent from the Respondent's FAP beginning November 14, 2016 and there was no evidence that the child's moving out of state was ever reported by Respondent who continued to receive FAP benefits for the absent child. The evidence did establish an IPV by clear and convincing evidence as for over 8 months no evidence of proper reporting of a change to remove the child from the group was made and thus an IPV is established.

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; BEM 708 (October 2016), p. 1. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, 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. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. 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 concerning FAP benefits. Therefore, Respondent is subject to a 12 month disqualification under the FAP program. BAM 720, p. 16.

Food Assistance 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 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.

Clients are not eligible for FAP benefits if they do not reside in Michigan. BEM 220, p. 1. At the hearing, the Department presented a FAP transaction history that established that Respondent was issued Michigan- FAP benefits for her minor son who was out of state from November 14, 2016 through June 2017. In the absence of any contrary evidence, this evidence established that Respondent's minor child did not reside in Michigan and was not eligible for FAP benefits issued by the Department. The Department provided as evidence the child received benefits in Pennsylvania as previously discussed.

In this case, the Department alleges that Respondent was overissued FAP benefits for the period between January 1, 2017 through June 30, 2017 (fraud period). The Department presented a benefit summary inquiry to support issuances received by Respondent during this period. Exhibit A, p. 36. The Department also correctly applied the 10/10/12 OI beginning period from the start of the OI period from November 14, 2016 the date the minor child left Michigan for Pennsylvania.

The Department based upon the evidence presented established that the Respondent's minor child no longer resided in Michigan. The Department presented overissuance budgets for the FAP fraud period which were reviewed at the hearing. The Respondent had a FAP group of 6 members, and once the minor child was removed the group size was reduced to 5 members and caused the overissuance. The FAP OI budgets were reviewed and are determined to be correct. Thus the Department has established a FAP overissuance of [REDACTED] the Department is entitled to recoup/collect.

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 (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 other reason other than unreported income or a change affecting need allowances, the OI amount is the amount of the MA payments.

In this case, the Department also alleges that an OI was present for Respondent's MA benefits. The Department alleges that Respondent failed to notify the Department that her minor child no longer resided in Michigan during the OI period but his MA benefits and premiums/capitations continued to be paid while he was out-of-state due to Respondent's failure to report the child's absence, thus establishing a client error.

For Medicaid cases, a Michigan resident is an individual who is living in Michigan except for a temporary absence. BEM 220 (January 2016), 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. The Respondent did not appear and thus there is no evidence that the child intended to

return to Michigan and was gone temporarily. The child received both FAP and MA benefits in Pennsylvania as discussed above.

For SSI-Related MA, Group 2 Pregnant Women, Group 2 Persons Under Age 21, Group 2 Caretaker Relative, a person's absence is temporary if for the month being tested:

- His/her location is known; and
- There is a definite plan for him to return home; and
- He/she lived with the group before the absence (Note: newborns and unborns are considered to have lived with their mothers); and
- The absence did not last, or is not expected to last, the entire month being tested unless the absence is for education, training, or active duty in the uniformed services of the U.S.

BEM 211 (January 2016), p. 6.

As shown above, BEM 211 and BEM 220 does state that 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, Respondent failed to participate in the hearing to establish that her son met the definition of temporary absence or that the purpose of his absence has been accomplished. The Department presented persuasive evidence showing how Respondent never reported the absence and the child was not a Michigan resident during the OI periods. As such, Respondent's child was not eligible for MA benefits during the OI periods and therefore, a MA OI is present. See BEM 211, pp. 6-7 and BEM 220, pp. 1-2.

In establishing the OI amount, BAM 710 states that for an OI due to any other reason, the OI amount is the amount of MA payments. See BAM 710, p. 2. The Department presented a summary of the MA capitations paid on Respondent's behalf from January 1, 2017 through April 30, 2017 in the amount of [REDACTED]. See Department investigation report, Exhibit A, p. 4 and Exhibit A, pp. 50-53. The Department seeks an alleged OI of [REDACTED]. As such, the Department is entitled to recoup [REDACTED] of MA benefits it issued to Respondent for her son for overissuance periods.

In summary, the total OI amount the Department is entitled to recoup is [REDACTED] of FAP benefits and [REDACTED] MA OI amount.

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:

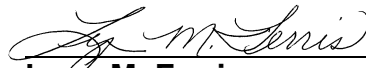
1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.

2. Respondent **did** receive an OI of program benefits in the amount of [REDACTED] from the following program(s) **Food Assistance**.
3. Respondent **did** receive an OI of program benefits in the amount of [REDACTED] from the **Medical Assistance** Program.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of [REDACTED] (total OI for both FAP and MA) in accordance with Department policy.

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

LF/cg



Lynn M. Ferris

Administrative Law Judge
for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Email:

MDHHS-Wayne-17-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]