



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: February 11, 2019
MAHS Docket No.: 18-010327
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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 January 29, 2019, from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG), and Kanisha Cartwright, OIG Section Manager. Respondent did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e). During the hearing, 207 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-207.

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) with respect to the Food Assistance Program (FAP) and Medicaid (MA)?
2. Should Respondent be disqualified from receiving FAP benefits, and if so, for how long?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material, and substantial evidence on the whole record, finds as material fact:

1. On ██████████, 2017, Respondent submitted to the Department an application for FAP and MA benefits. On the application, Respondent indicated that he lived at an address in ██████████, Michigan. Exhibit A, pp. 11-64.

2. On the application, Respondent acknowledged that he received, reviewed, and agreed with the pamphlet entitled Things You Must Do and certified that all information he provided was true. Respondent was warned of penalties for fraud if he was dishonest. Exhibit A. pp. 45-46.
3. The Things You Must Do pamphlet advised Respondent that he was required be truthful in all filings to the Department and to report any changes in address or moving out of the state of Michigan within 10 days and that an intentional failure to do so violated the law and if proven, would result in criminal and/or civil penalties, including disqualification from the program. Exhibit A, pp. 46-47.
4. Respondent was approved for MA benefits. However, it appears that his FAP application was denied. Exhibit A, pp. 192-198.
5. On [REDACTED], 2017, Respondent submitted to the State of Colorado (Colorado) an application for FAP and MA benefits. On the application, Respondent indicated that he was homeless but lived in Colorado and intended to stay there. Exhibit A, pp. 110-148.
6. Respondent's application was approved by Colorado. Colorado issued Respondent FAP benefits from June 28, 2017 through November 30, 2017 and provided MA benefits from June 1, 2017 through January 31, 2018. Exhibit A, pp. 190-191.
7. On [REDACTED] 2017, Respondent submitted to the Department an application for FAP benefits. On the application, Respondent indicated that he was not receiving FAP benefits from any other state and provided an address in Detroit, Michigan. Exhibit A, pp. 65-109.
8. On the application, Respondent acknowledged that he received, reviewed, and agreed with the pamphlet entitled Things You Must Do and certified that all information he provided was true. Respondent was warned of penalties for fraud if he was dishonest. Exhibit A. p. 90.
9. The Things You Must Do pamphlet advised Respondent that he was required be truthful in all filings to the Department and to report any changes in address or moving out of the state of Michigan within 10 days and that an intentional failure to do so violated the law and if proven, would result in criminal and/or civil penalties, including disqualification from the program. Exhibit A, p. 91.
10. Respondent's application was approved, and the Department thereafter began providing Respondent with monthly FAP benefits. Exhibit A, p. 198.
11. Respondent did not have an apparent mental impairment that would limit his understanding or ability to fulfill this requirement. Exhibit A, p. 207.

12. The Department's OIG filed a hearing request on October 1, 2018, to establish an IPV. Exhibit A, pp. 1-5.
13. From July 1, 2017, through November 30, 2017, the Department issued to Respondent \$3,708 in FAP benefits. From June 1, 2017, through January 31, 2018, the Department provided to Respondent MA benefits valued at \$6,177.81. The Department is not seeking the establishment of an overissuance as Respondent has filed for bankruptcy. Exhibit A, pp. 1-5.
14. This was Respondent's first alleged IPV. However, the OIG requested that Respondent be disqualified from receiving FAP benefits for ten years based on an allegation of concurrent receipt of benefits. Exhibit A, pp. 1-5.
15. The Department considers the alleged fraud period with respect to FAP to be from July 1, 2017 through November 30, 2017. For MA, the Department considers the fraud period to be June 1, 2017 through January 31, 2018. Exhibit A, pp. 1-5.
16. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the US Post Office 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 Department alleges that Respondent's concurrent receipt of FAP and MA benefits from the Department and from Colorado constituted an IPV with respect to both programs.

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)).

In this case, the Department has met its burden. Respondent was required to completely and truthfully answer all questions in forms and in interviews. BAM 105 (April 2016), p. 9. The Department clearly and correctly instructed Respondent be honest and the consequences for failing to do so. Despite being so informed, Respondent dishonestly represented on his July 5, 2017, FAP application that he was not receiving FAP benefits from any other state when he was actively receiving FAP benefits from Colorado based on an application Respondent submitted to Colorado just days prior to the application he submitted to the Department. Respondent's transaction history from Michigan and Colorado show that he routinely used benefits from both states, further bolstering the conclusion that Respondent was intentionally defrauding both Michigan and Colorado.

Respondent's dishonest statements to the Department must be considered an intentional misrepresentation to maintain his FAP benefits since Respondent knew or should have known that he could only receive FAP benefits from one state at any given time. It is clear that Respondent had an intent to deceive the Department regarding his out of state benefits in order to maximize his FAP benefits.

Respondent did not have any apparent physical or mental impairment that would limit his understanding or ability to fulfill his requirements. The Department has proven by clear and convincing evidence that Respondent committed an Intentional Program Violation.

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, 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 (October 2015), p. 1.

The Department's position was that this case requires the imposition of a ten-year disqualification because Respondent received concurrent benefits from both Michigan

and Colorado. However, Respondent did not make any fraudulent statements to the Department “regarding his identity or residence,” which is a required finding before imposing the ten-year disqualification. BAM 720, p. 16; BEM 203, p. 1. Rather, Respondent misrepresented to Colorado his residence in order to receive benefits from Colorado and then misrepresented the fact that he was getting benefits from Colorado when applying for benefits from the Department. At no point during the relevant time period was Respondent not a Michigan resident. As there was no fraudulent statement regarding residence or identity to the Department, a ten-year disqualification is not appropriate.

However, Respondent did commit an IPV with respect to his FAP benefits case by lying about his receipt of FAP benefits from Colorado. As there is no evidence that Respondent has ever been found to have committed an IPV related to FAP benefits, this is Respondent’s first FAP IPV sanction. Therefore, Respondent is subject to a one-year disqualification from receiving FAP benefits.

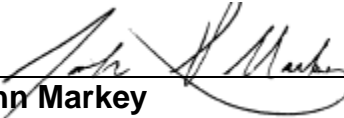
DECISION AND ORDER

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 established by clear and convincing evidence that Respondent committed an IPV with respect to his FAP and MA benefits.
2. Respondent is subject to a one-year disqualification from receiving FAP benefits.

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

JM/cg



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 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:

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