



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 28, 2019
MAHS Docket No.: 18-012357
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 March 18, 2019, 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. 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 103-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-103.

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)?
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. Respondent was continuously receiving MA benefits from the State of California from March 1, 2015, through November 6, 2017. Exhibit A, p. 93.

On [REDACTED], 2017, Respondent submitted to the Department an application for MA benefits. Exhibit A, pp. 12-36.

2. Respondent signed the application. By signing the application, Respondent certified that he received, reviewed, and understood the information contained within the DHHS publication titled "Things You Must Do." Exhibit A, pp. 18-19.
3. "Things You Must Do" advised Respondent that he was required 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 potential disqualification from the program. Exhibit A, pp. 19-20.
4. Based on the information Respondent provided in the application, the Department approved Respondent for MA benefits. From May 18, 2017, through December 31, 2017, the Department issued MA benefits for Respondent's benefit totaling \$2,396.72. Exhibit A, pp. 1-9; 96-97.
5. On [REDACTED], 2017, Respondent submitted to the Department an application for FAP benefits. Exhibit A, pp. 37-65.
6. Respondent signed the application. By signing the application, Respondent certified that he received, reviewed, and understood the information contained within the DHHS publication titled "Things You Must Do." Exhibit A, p. 47.
7. "Things You Must Do" advised Respondent that he was required 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 potential disqualification from the program. Exhibit A, p. 48.
8. Respondent's application for FAP benefits was approved, and the Department issued to Respondent monthly FAP benefits of \$194 from May 1, 2017, through September 30, 2017, and \$192 per month from October 1, 2017, through December 31, 2017, totaling \$1,546. Exhibit A, pp. 1-9; 98.
9. Starting April 27, 2017, all of Respondent's Michigan-issued FAP benefits were used in the State of California. Exhibit A, pp. 66-70.
10. On [REDACTED], 2017, Respondent submitted to the State of California an application for MA and FAP benefits. On that application, Respondent indicated that he was a California resident and dishonestly certified that he was not receiving benefits from any other state at the time of the application despite receiving both MA and FAP benefits from the Department. Exhibit A, pp. 72-86.

11. California approved Respondent's application. All of Respondent's California-issued FAP benefits were redeemed at locations in California from May 2017 through at least October 2017. Exhibit A, pp. 88-92.
12. Based on Respondent's pattern of exclusive use of Department-issued FAP benefits in California and Respondent's receipt of benefits from California, the Department investigated the matter to determine whether Respondent was eligible to receive the benefits. During the course of the investigation, the Department found that Respondent appeared to be living in California. Exhibit A, pp. 1-9; 94-95; 102-103.
13. The Department's OIG filed a hearing request on November 28, 2018, to establish an overissuance of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by collecting FAP and MA benefits from Michigan after moving out of state. Exhibit A, pp. 1-9.
14. This was Respondent's first alleged IPV.
15. The OIG requested that Respondent be disqualified from receiving FAP benefits for a period of ten years.
16. The Department's OIG indicates that the time period it is considering the fraud period with respect to FAP benefits is May 18, 2017, through December 31, 2017, (fraud period), during which the Department issued Respondent \$1,546 in FAP benefits. The alleged fraud period with respect to MA is May 18, 2017, through December 31, 2017, during which the Department dispensed \$2,396.72 in MA benefits. Exhibit A, pp. 1-5, 41-44.
17. 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's failure to report his move out of state while continuing to be covered by Michigan's MA and use his Michigan issued EBT card amounted to an Intentional Program Violation (IPV) with respect to MA and FAP.

Overissuance

Only residents of Michigan are eligible to receive benefits from the Department. BEM 220 (January 2016), p. 1; 7 CFR 273.18. 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 was a California resident as of late April 2017, at the latest. This conclusion is based on the facts that Respondent's EBT cards issued by both Michigan and California were exclusively used in California starting April 27, 2017 and Respondent submitted to the State of California an application for FAP and MA benefits on May 11, 2017, wherein he certified that he was a California resident.

Thus, Respondent was no longer a Michigan resident and was ineligible to receive benefits. However, because of Respondent's failure to report his move to California, the Department issued for Respondent's benefit FAP benefits of \$1,546 and MA benefits of \$2,396.72. As Respondent was ineligible to receive those benefits, they are considered an overissuance. In total, the overissuance was \$3,942.72.

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 with respect to both programs. For MA, 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 January 27, 2017, MA application that he was not receiving MA benefits from any other state when he was actively receiving MA benefits from California.

Respondent's dishonest statement to the Department must be considered an intentional misrepresentation to receive benefits from Michigan since Respondent knew or should have known that he could only receive MA 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.

For FAP, Respondent did not make any dishonest statements to the Department on his [REDACTED] 2017, application for FAP benefits. By that time, his FAP benefits he had previously been receiving in California had stopped. However, Respondent was required to report changes in his circumstances, including changes in residency, to the Department within 10 days of the date of the change. BAM 105, pp. 11-12. The Department clearly informed Respondent of this requirement.

Respondent moved to California by the end of April 2017. Starting April 27, 2017, Respondent's Michigan-issued FAP benefits were used exclusively in the State of California until his last purchase in October 2017. On [REDACTED] 2017, Respondent applied for FAP benefits from the State of California. On that application, Respondent dishonestly certified to California that he was not receiving benefits from any other state. Respondent's FAP application was approved by California, and as with his Michigan-issued FAP benefits, Respondent's California-issued FAP benefits were used exclusively in the State of California.

Clearly, Respondent sought to maximize his monthly FAP benefits by defrauding Michigan and California into concurrently issuing FAP benefits. Respondent's failure to report his change in residency to the Department is considered intentional because Respondent knew of his requirement to report and that Michigan would no longer issue him FAP benefits once he reported he moved out of state. 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 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. 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 California. However, when seeking FAP benefits, 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 California his receipt of other benefits in order to receive benefits from California while continuing to receive them from Michigan. As there was no fraudulent statement to the Department regarding residence or identity when seeking FAP benefits, a ten-year disqualification is not appropriate.

However, Respondent did commit an IPV with respect to his FAP benefits case by failing to report his move to California and subsequent receipt of FAP benefits from that state. 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.
3. Respondent received an overissuance of FAP benefits in the amount of \$1,546 that the Department is entitled to recoup and/or collect.
4. The Department paid an overissuance of MA benefits in the amount of \$2,396.72 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 ORDERED that the Department may initiate recoupment and/or collection procedures for the FAP overissuance amount of \$1,546 established in this matter less any amounts already recouped or collected.

IT IS ORDERED that the Department may initiate recoupment and/or collection procedures for the MA overissuance amount of \$2,396.72 established in this matter less any amounts already recouped or collected.

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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