



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: September 16, 2019
MOAHR Docket No.: 19-004575
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 September 5, 2019 from Detroit, Michigan. The Department was represented by Valerie Lancour, 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, an 87-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-87.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and/or Family Independence Program (FIP) 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 FIP and/or MA?
3. Should Respondent be disqualified from receiving FAP and/or FIP 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. Respondent received monthly FAP benefits from the State of Indiana from September 1, 2017 through April 30, 2018. Exhibit A, pp. 30-33.
2. On April 9, 2018, Respondent submitted to the Department an application for FAP, FIP, and MA benefits. On the application, Respondent indicated that she lived in Detroit, Michigan in a household that included Respondent and three minor children. Exhibit A, pp. 15-23.
3. On two separate places on the application, Respondent represented to the Department that nobody in her household had received any FAP benefits from any other state in the 30 days preceding the application date of April 9, 2019. Exhibit A, pp. 16, 19.
4. Respondent signed the application. By signing the application, Respondent certified that the information on the application was true and complete to the best of her 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 she received, read, and understood the instructions provided in the Important Things to Know pamphlet. Included in that pamphlet is an instruction to report any changes to residency within ten days of the change and that failure to do so could result in fraud proceedings being initiated against her. Exhibit A, p. 15.
5. Respondent's application was approved, and Respondent thereafter received FIP, FAP, and MA benefits. Exhibit A, p. 68-71; 72-82.
6. Respondent received FAP benefits from both the Department Indiana during the month of April 2018. Exhibit A, pp. 30-33; 68-71.
7. Respondent's Michigan-issued FAP benefits were redeemed exclusively in Indiana starting September 9, 2018. Exhibit A, pp. 34-41.
8. On September 13, 2018, Respondent enrolled her three children in schools in Kokomo, Indiana. Exhibit A, pp. 66-67.
9. On March 2, 2019 and March 21, 2019, Respondent submitted to the Department completed Redetermination forms. On the submissions, Respondent asserted that she lived in Michigan and that her children went to school at a Detroit school. Respondent signed the forms, thereby acknowledging that the information was truthful and that she understood the consequences for knowingly providing false information. Exhibit A, pp. 24-29.
10. The schools that Respondent asserted her children attended had no record of them ever attending.

11. Based on Respondent's dual receipt of FAP benefits from the Department and Indiana, the Department investigated the matter to determine whether Respondent was eligible to receive the benefits.
12. The Department's OIG filed a hearing request on [REDACTED], 2019 to establish an overissuance of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by collecting FAP benefits from Michigan and Indiana. It was also alleged that Respondent committed an IPV with respect to FAP, FIP, and MA by misrepresenting her residency in order to continue to receive benefits after she moved out of state. Exhibit A, pp. 1-11.
13. This was Respondent's first alleged IPV. Exhibit A, pp. 86-87.
14. The OIG requested that Respondent be disqualified from receiving FAP benefits for a period of ten years based on concurrent receipt of benefits. The OIG further requested that Respondent be disqualified from receipt of FIP benefits for a period of one year. Exhibit A, pp. 1-11.
15. The Department's OIG indicates that the alleged fraud period with respect to FAP benefits is April 9, 2018 through April 30, 2018 and November 1, 2018 through March 31, 2019 (fraud period), during which the Department issued Respondent \$2,781 in FAP benefits. With respect to FIP, the alleged fraud period is November 1, 2018 through March 31, 2019, during which the Department issued to Respondent \$1,370 in FIP benefits. With respect to MA, the alleged fraud period is November 1, 2018 through March 31, 2019, during which the Department expended \$1,272.96 in MA benefits for Respondent's group's benefit. Exhibit A, pp. 1-11, 68-85.
16. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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 made false statements regarding her residency in order to concurrently obtain FAP benefits from more than one state. Additionally, the Department asserted that Petitioner failed to report a move out of state and made subsequent fraudulent misrepresentations regarding her residency in order to continue receiving FIP, FAP, and MA benefits when she was not eligible.

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. 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 duplicate FAP benefits from the Department and Indiana during April 2018. As Respondent had already received FAP benefits from Indiana for that time period, the amount issued by the Department was an overissuance. The overissuance for that period was \$431.

Additionally, the Department showed by clear and convincing evidence that as of September 2018 at the latest, Respondent was no longer a Michigan resident. This conclusion is based on the fact that Respondent's Michigan-issued FAP benefits were used exclusively in Indiana starting September 9, 2018 and her children being enrolled in Indiana schools on September 13, 2018 through at least March 2019.

Thus, based on the information presented, Respondent was not a Michigan resident and was ineligible to receive benefits from the Department from at least November 1, 2018 through the time her cases were closed. However, because of Respondent's failure to inform the Department of her move and her subsequent misrepresentations

regarding her residency, the Department issued to Respondent FAP benefits of \$2,353, FIP benefits of \$1,370, and MA benefits of \$1,272.96 from November 1, 2018 through March 31, 2019. As Respondent was ineligible to receive those benefits, they are considered an overissuance. In total, the FAP overissuance was \$2,784, the FIP overissuance was \$1,370, and the MA overissuance was \$1,272.96.

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 her 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). Clients must also completely and truthfully answer all questions on forms and in interviews. BAM 105, p. 9. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days and to be honest. Respondent lied on the April 9, 2018 application and both 2019 Redeterminations. Additionally, Respondent failed to report that she moved to Indiana.

Respondent's failure to report the change and fraudulent misrepresentations to the Department must be considered an intentional misrepresentation to receive benefits she was not entitled to from Michigan since Respondent knew or should have known that she could only receive FAP benefits from one state at any given time. Respondent further knew that she was only entitled to receive benefits from the state where she was a resident. It is clear that Respondent had an intent to deceive the Department regarding her receipt of benefits from Indiana and her residency therein. Respondent sought to maximize her monthly FAP benefits by defrauding Michigan into issuing benefits she was not entitled to. The Department has proven by clear and convincing evidence that Respondent committed an Intentional Program Violation with respect to FIP, FAP, and MA.

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).

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 Indiana. Based on the evidence presented, Respondent made a fraudulent representation on her April 9, 2018 FAP application regarding her receipt of benefits from another state. Therefore, Respondent is subject to a ten-year disqualification from receiving FAP benefits.

However, Respondent did not receive duplicate FIP benefits. Therefore, Respondent is only subject to a one-year disqualification from receiving FIP 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 her FAP, FIP, and MA benefits.
2. Respondent is subject to a ten-year disqualification from receiving FAP benefits.
3. Respondent is subject to a one-year disqualification from receiving FIP benefits.
4. Respondent received an overissuance of FAP benefits in the amount of \$2,784 that the Department is entitled to recoup and/or collect.
5. Respondent received an overissuance of FIP benefits in the amount of \$1,370 that the Department is entitled to recoup and/or collect.
6. Respondent received an overissuance of MA benefits in the amount of \$1,272.96 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 ten years.

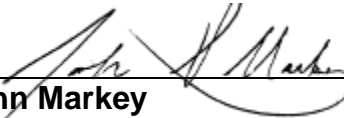
IT IS FURTHER ORDERED that Respondent shall be disqualified from receiving FIP benefits for a period one year.

IT IS FURTHER ORDERED that the Department may initiate recoupment and/or collection procedures for the FAP overissuance amount of \$2,784 established in this matter less any amounts already recouped or collected.

IT IS FURTHER ORDERED that the Department may initiate recoupment and/or collection procedures for the FIP overissuance amount of \$1,370 established in this matter less any amounts already recouped or collected.

IT IS FURTHER ORDERED that the Department may initiate recoupment and/or collection procedures for the MA overissuance amount of \$1,272.96 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 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

Via Email:

MDHHS-Wayne-76-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

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