



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: October 21, 2019
MOAHR Docket No.: 19-009237
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 October 9, 2019, from Detroit, Michigan. The Department was represented by Craig Curtiss, 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 State Disability Assistance (SDA) 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 12 months?

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 [REDACTED], 2019, 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 SDA benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in residency to the Department within 10 days.
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 is March 1, 2018 through October 31, 2018 (fraud period).
7. During the fraud period, Respondent was issued \$1,600 in SDA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in SDA benefits in the amount of \$1,600.
9. This was Respondent's first alleged IPV.
10. 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 State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Health and Human Services (formerly known as the Department of Human Services) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

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 (October 2017), pp. 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 2018), p. 7; 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 273.16(e)(6). The federal regulations define an IPV as intentionally: (1) made a false or misleading

statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Supplemental Nutrition Assistance Program (SNAP), SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing for trafficking of SNAP benefits or Electronic Benefit Transfer (EBT) cards. 7 CFR 273.16(c). 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 her SDA benefits because she failed to notify the Department that she was no longer residing in the State of Michigan, nor was she residing with the disabled individual for which she was providing care. To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (April 2017), p. 1. A caretaker of a disabled person may receive SDA provided that the assistance of the caretaker is medically necessary for at least 90 days and the caretaker and the disabled person live together. BEM 261, p. 4. Additionally, for a client to receive SDA, they must be resident of the State of Michigan. BEM 220 (January 2016), p. 1. For SDA, a person is a resident if all of the following apply: (i) they are not receiving assistance from another state; (ii) they are living in Michigan, except for a temporary absence, and (iii) they intend to remain in the state permanently or indefinitely. BEM 220, p. 1.

In support of its contention that Respondent committed an IPV, the Department presented an application for SDA benefits submitted by Respondent on November 18, 2017. Respondent reported that she was living with her disabled father in Muskegon, Michigan. The Department asserts that when completing the application process, Respondent acknowledged that she had received the Information Booklet advising her regarding "Things You Must Do" which explained reporting changes circumstances, including residency.

The Department also presented an application for assistance submitted to the State of California on March 14, 2018. Respondent reported that she was living in California and that she was not receiving any cash aid. Respondent indicated that she was the only member of her household. Additionally, the Department submitted Respondent's SDA cash purchase history which showed she began utilizing her SDA cash benefits in Arkansas on January 16, 2018. Respondent started using her SDA cash assistance benefits in California on February 9, 2018. Respondent did not return to Michigan to complete any transactions with her SDA cash assistance during the fraud period.

The Department presented Respondent's SDA Benefit Summary Inquiry which showed she was issued benefits through October 2018. The Department presented sufficient evidence to establish that Respondent moved out of state, and out of the household with her father in January 2018. Respondent allowed a significant time period to lapse while she was out of state and out of her father's home without reporting the information to the Department. This indicates Respondent was intentionally withholding information regarding her residency to receive benefits for which she was not entitled. Therefore, the Department established by clear and convincing evidence that Respondent

intentionally withheld facts for the purpose of maintaining SDA benefits, and thus, it has established that she committed an IPV in connection with her SDA case.

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; 7 CFR 273.16(b). 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/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department requested that Respondent be subject to a 12-month disqualification period. As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV concerning SDA. Therefore, Respondent is subject to a one-year disqualification from her receipt of SDA benefits.

Overissuance

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; 7 CFR 273.18. The Department presented Respondent's SDA Benefit Summary Inquiry which showed she was issued \$1,600 in SDA benefits during the fraud period. The Department argued that Respondent was entitled to \$0 in SDA benefits during this time period.

As stated above, the Department presented sufficient evidence to establish that Respondent moved out of state and out of her father's household in January 2018. Per policy, Respondent must be a resident of Michigan and living with the individual for which she provided care. Accordingly, the Department established Respondent was not entitled to any SDA benefits during the fraud period. Therefore, the Department established that it is entitled to recoup/collect \$1,600 in overissued SDA benefits issued to Respondent.

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:

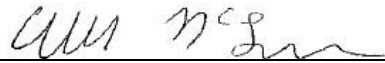
1. The Department has established by clear and convincing evidence that Respondent committed an IPV.

2. Respondent did receive an OI of SDA program benefits in the amount of \$1,600.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$1,600, less any amounts already recouped/collected, in accordance with Department policy.

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

EM/cg



Ellen McLemore
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-Muskegon-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

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