



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
OH [REDACTED]

Date Mailed: January 2, 2020
MOAHR Docket No.: 19-009449
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

**HEARING DECISION FOR CONCURRENT BENEFITS
INTENTIONAL PROGRAM VIOLATION AND RECOUPMENT OF MA BENEFITS**

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 Regulations, particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on December 17, 2019, from Lansing, Michigan. The Department was represented by Monica Tardif of the Office of Inspector General (OIG). Respondent appeared and testified.

ISSUES

1. Did Respondent receive an overissuance (OI) of 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) of the FAP program?
3. Should Respondent be disqualified from receiving FAP benefits for ten years on the grounds that Respondent ineligibly received FAP concurrent 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. The Department's OIG filed a hearing request on August 20, 2019, to establish an IPV of FAP benefits received by Respondent as a result of Respondent having received concurrent FAP program benefits in Michigan and Ohio, requesting a ten-year disqualification period.

2. The Department's OIG filed a hearing request on August 20, 2019, to establish an overissuance of MA benefits due to Respondent failing to report a change of address when he moved to Ohio.
3. Respondent was a recipient of FAP, and MA benefits issued by the Department during the overissuance time frame at issue herein.
4. On the Assistance Application signed by Respondent on August 24, 2017, Respondent reported that he intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in his residence to the Department.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. On January 25, 2018, Respondent completed an Application for Assistance in the State of Ohio. Respondent moved to Ohio in November of 2017. The State of Ohio verified that Respondent received concurrent FAP benefits from January 25, 2018 through July 31, 2018.
8. A CLEAR report shows that Respondent registered a vehicle and residential address change to Ohio with a report date of April 25, 2018.
9. Respondent received Ohio FAP benefits from January 25, 2018 through July 31, 2018. Exhibit A.1.
10. The EPPIC report shows that Respondent used his Michigan Benefits on January 16, 2018, February 16, 2018, May 23, 2018, and May 30, 2018.
11. The OIG indicates that the time period they are considering the fraud period is January 25, 2018 through July 31, 2018.
12. During the alleged fraud period, Respondent was ineligibly issued \$3,845.09 in MA benefits from the State of Michigan; Respondent was ineligibly issued \$884.85 in FAP benefits.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services 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 of Health and Human Services (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:

- FAP trafficking OIs 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.

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; BAM 720.

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 (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 requesting an IPV of the FAP program. Respondent did credibly testify that he was not using his Michigan FAP card at first during the months that he was in Ohio. However, Respondent also admitted that he used the FAP benefits by charging \$412.53 and \$334.18 in May 2018 when and while a concurrent recipient of FAP benefits in Ohio. Under the concurrent benefits of federal law and state policy, the undersigned is required to uphold the Department's request, finding an IPV based on the concurrent use of FAP benefits in two states. The facts are clear and convincing and as such, support finding that Respondent committed an IPV of the FAP program.

As noted above, the Department is not requesting an IPV of the MA program.

Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720. 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.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA or FAP. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720.

In this case, Respondent was a very pleasant gentleman, and credible. If Respondent had not utilized duplicate benefits, then an IPV might not be found. However here, evidence shows and Respondent cashed in benefits during the same month in two different states and admitted to the concurrent use. Under the law and policy, the undersigned has no other choice than to find in favor of the Department regarding the concurrent benefits disqualified period.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700.

Here, clear and convincing evidence shows that Respondent ineligibly received \$884.85 in FAP benefits from the State of Michigan, while simultaneously collecting FAP benefits from the State of Ohio.

However, the evidence is not as convincing regarding the MA. Respondent credibly testified that he informed his worker at one point of a change. Respondent also credibly testified that when he went to a pharmacy, he was told that he only had MA in Michigan and not in Ohio. As such, the undersigned does not find that the evidence shows that Respondent received an overissuance due to client error. Rather, the error was agency error. Respondent is entitled to this decision, based on the fact that his worker was not present at the administrative hearing, and not available for examination and/or cross examination. Under BAM 710, the Department is entitled to recoup MA overissuance, only if the evidence supports finding client error. Here, the undersigned does not.

It should be distinguished in this case that despite the fact that Respondent moved to Ohio, Respondent argues that he reported his change of address. That worker was not at the administrative hearing. What makes the FAP an IPV is the unrefuted actual cashing in of Michigan FAP benefits, while also receiving Ohio FAP benefits. The MA however, does not rise to this level, in light of Respondent's credible testimony of having reported a change of address and the inability of Respondent to examine and/or cross-examine his worker at the administrative hearing. Thus, the MA error here is agency error.

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, concludes that:

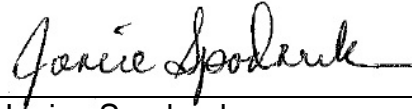
1. The Department has established by clear and convincing evidence that Respondent committed a FAP IPV due to the receipt of concurrent benefits.
2. Respondent received an OI of MA benefits due to agency error.

The Department is ORDERED to BEGIN DOING WITHIN TEN DAYS OF THE DATE OF THIS DECISION AND ORDER THE FOLLOWING:

1. Delete the MA OI and cease any recoupment action regarding MA benefits due to the error being found to be agency error and thus, on this issue the Department is PARTIALLY REVERSED, and
2. Disqualify Respondent from participation in the FAP program for ten years due to

concurrent benefits law and policy, and engage in any recoupment/collection of \$884.85 in FAP benefits ineligibly received as permitted by policy and procedure.

On this issue the Department is PARTIALLY AFFIRMED.



JS/ml

Janice Spodarek
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

Petitioner

OIG – Via Electronic Mail
P.O. Box 30062
Lansing, MI 48909-7562

DHHS

Sharnita Grant
25637 Ecorse Rd.
Taylor, MI 48180

Wayne (District 18) County DHHS – Via
Electronic Mail

Recoupment – Via Electronic Mail

L. Bengel – Via Electronic Mail

Respondent

[REDACTED] – Via First Class Mail
[REDACTED]
[REDACTED] OH [REDACTED]