



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: February 3, 2020
MOAHR Docket No.: 19-009598
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 January 24, 2020, from Detroit, Michigan. The Department was represented by Daniel Marchetti, 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 Food Assistance Program (FAP) and Medical Assistance (MA) program 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 for ten years?

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 September 6, 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 FAP program benefits.
3. Respondent and Respondent's child were recipients of FAP and MA benefits issued by the Department.
4. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. The Department's OIG indicates that the time period it is considering the fraud period for FAP benefits is September 13, 2017 through November 30, 2017 (FAP fraud period) and September 13, 2017 through June 30, 2018 for MA benefits (MA fraud period).
6. During the FAP fraud period, Respondent was issued \$500 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
7. During the MA fraud period, the Department contributed \$3,646 in funds to provide Respondent and Respondent's child's MA benefits, and the Department alleges that Respondent and her child were entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$500 and MA benefits in the amount of \$3,646.
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 Services as undeliverable.

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 (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 (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. 6; 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: (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 FAP benefits because she received Michigan-issued FAP benefits at the same time she was issued food assistance benefits in Georgia. Under Department policy, a person cannot receive FAP benefits in more than one state for any month. BEM 222 (March 2016), p. 2; see also 7 CFR 273.3(a).

Additionally, the Department alleges that Respondent was overissued MA benefits due to client error or IPV because she received Michigan-issued MA benefits and at the same time she received medical benefits from the State of Georgia. Department policy provides that the Department may initiate recoupment of an MA OI due to client error or IPV, not when due to agency error. BAM 710 (October 2016), p. 1. A client error OI occurs when the client received more benefits than entitled to because the client gave incorrect or incomplete information to the Department. BAM 700, p. 5. Benefit duplication is prohibited except for MA and FAP in limited circumstances. BEM 222, p. 1. The Department will assume an MA applicant is not receiving medical benefits from another state unless evidence suggests otherwise. BEM 222, p. 1. Upon approval, the Department will notify the other state's agency of the effective date of the client's medical coverage in Michigan. BEM 222, p. 2.

In support of its contention that Respondent committed an IPV, the Department presented an application submitted by Respondent on September 13, 2017. In the application, Respondent indicated multiple times that she was not receiving food assistance benefits. Respondent also reported that she and her child did not have medical coverage.

The Department also presented correspondence from the State of Georgia stating that Respondent and her child had medical assistance and food assistance benefit cases that were active beginning June 8, 2016. Respondent's food assistance benefit case in

the State of Georgia remained active until November 30, 2017. Respondent's and Respondent's child's medical assistance benefit cases remained active in the State of Georgia until June 30, 2018.

The Department also presented Respondent's food assistance benefit usage history related to her Georgia-issued food benefits. The document shows that between the period of September 1, 2017 and November 18, 2017, Respondent used her Georgia-issued food assistance in the State of Michigan. The usage history shows Respondent was continuously receiving, and using, Georgia-issued food benefits during this time period. Additionally, the Department presented Respondent's Michigan-issued FAP benefit usage history, showing Respondent was also using her Michigan-issued FAP benefits.

The evidence presented establishes that for the period of September 13, 2017 through November 30, 2017, Respondent received Michigan-issued FAP benefits, and during the same period, received food assistance benefits issued by the State of Georgia. Respondent made no attempt to notify the State of Michigan on her application that she was receiving food assistance from another state. Based on Respondent's food assistance benefit usage, she was clearly aware she was receiving food assistance benefits from both states. Therefore, the Department established by clear and convincing evidence that Respondent committed an IPV of FAP benefits based on concurrent receipt of benefits, which is a violation of SNAP regulations. Additionally, Respondent did not inform the Department that she was receiving medical assistance from the State of Georgia on her Michigan application. Therefore, the Department presented sufficient evidence to establish that Respondent received an MA OI due to client error.

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. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits where the client made fraudulent statement regarding identity or residency, and, for all other IPV cases involving FAP, 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; see also 7 CFR 273.16(b)(1) and (5). 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.

As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV through concurrent receipt food assistance benefits from two states at the same time. In order to apply the ten-year disqualification for concurrent receipt of benefits, the Department must establish that the client made fraudulent statements regarding identity or residency. BAM 720, p. 16. In this case, Respondent indicated she was living in Michigan at the time of the September 13, 2017 application. The Department testified that there was no evidence that Respondent was

not living in Michigan at that time. Thus, the Department failed to present sufficient evidence that Respondent provided fraudulent statements regarding her identity or residency. Therefore, Respondent is not subject to a 10-year disqualification. However, Respondent is subject to the standard one-year disqualification from receipt of FAP benefits based on her violation of SNAP regulations for the concurrent receipt of 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.

FAP OI

At the hearing, the Department established that the State of Michigan issued a total of \$500 in FAP benefits to Respondent during the fraud period. The Department alleges that Respondent was eligible for \$0 in FAP benefits during this period.

As previously stated, the Department presented evidence from the State of Georgia which revealed that Respondent received FAP benefits during the fraud period. The Department also presented the benefits issuance summary, which revealed that Respondent received Michigan FAP benefits during the same months. Respondent was not eligible for FAP benefits issued by the State of Michigan during any period she was issued food assistance benefits by the State of Georgia. BEM 222, p. 3; 7 CFR 273.3(a). Therefore, the Department has established it is entitled to recoup the \$500 in FAP benefits it issued to Respondent during the fraud period.

MA OI

For an MA OI due to any reason other than unreported income or a change affecting the need allowances, the MA OI amount is the amount of the MA payments. BAM 710, p. 2. In this case, the Department presented an expenditure summary showing the total MA payments made by the Department on Respondent's and Respondent's child's behalf during the fraud period and a report of capitation payments showing the monthly insurance premiums the Department paid to provide Respondent and Respondent's child with MA coverage during the fraud period. The sum of these expenses is \$3,646. Therefore, the Department is entitled to recoup and/or collect from Respondent an MA OI of \$3,646 during the fraud period.

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 concerning FAP.

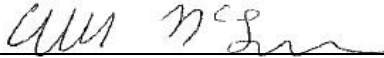
2. Respondent did receive an OI of FAP program benefits in the amount of \$500 during the FAP fraud period.
3. The Department has established an OI of MA program benefits of \$3,646 during the MA fraud period.

The Department is ORDERED to do the following in accordance with Department policy:

1. initiate recoupment and/or collection procedures for the FAP OI amount of \$500, less any amounts that have already been recouped and/or collected; and
2. initiate recoupment and/or collection procedures for the MA OI amount of \$3,646, less any amounts that have already been recouped and/or collected.

It is FURTHER ORDERED that Respondent is subject to a one-year disqualification from FAP benefits.

EM/cg



Ellen McLemore
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

