



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], MI [REDACTED]

Date Mailed: December 27, 2019
MOAHR Docket No.: 19-009674
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 hearing was held on December 17, 2019, from Lansing, Michigan. The Department was represented by Monica Tardif, Regulation Agent of the Office of Inspector General (OIG).

Respondent personally appeared unrepresented at the hearing.

ISSUES

1. Did Respondent receive an overissuance in MA benefits for which 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 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 August 29, 2019, to establish a disqualification against Respondent as a result of Respondent having allegedly committed an IPV of the FAP program, and an overissuance of the MA program.
2. The OIG is requesting a FAP IPV disqualification, and an MA overissuance ruling.

3. The OIG has requested that Respondent be disqualified from receiving FAP program benefits for 12 months.
4. The OIG previously established a FAP debt for which the Department is not requesting a ruling.
5. Respondent was aware of the responsibility to report changes in income pursuant to her acknowledgment on an application dated February 27, 2015.
6. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. On March 10, 2015 Respondent began working at Trinity Transportation and received her first paycheck March 27, 2015. On November 27, 2015 the State of Michigan was alerted to Respondent's Federally Facilitated Marketplace Application and a DHHS 1010 showing earned income not previously reported or budgeted. Exhibit A.1.
8. The Department's OIG indicates that the time period it is considering the fraud and/or benefit period for both programs is May 1, 2015 through December 31, 2015.
9. During the alleged overissuance MA benefit period, the Department paid \$ [REDACTED] on behalf of Respondent for medical capitation benefits, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
10. This was Respondent's first alleged IPV of the FAP program.

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 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:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking overissuance 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 is also suspected for a client who is alleged to have trafficked FAP benefits. 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 273.16(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.

Here, Respondent argued that she called her worker and informed her worker that she was working. The Department responded that there was no record of Respondent having reported the income until Respondent's Federally Facilitated Marketplace Application and a subsequent DHHS 1010. Respondent did not have any time frame, dates, or any specificity which would add to the credibility of Respondent's account of the events. Under these facts, the undersigned must find that the evidence of record supports finding clear and convincing evidence of an IPV of the FAP program is shown.

In addition, during the same benefit period, the State of Michigan paid \$ [REDACTED] in payments for medical assistance on behalf of Petitioner when she was not eligible due to Respondent's failure to timely report the earned income.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving FAP program benefits. BAM 720.BEM 708. 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. 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.

In this case, evidence shows that this is Respondent's first IPV of the FAP program.

Overissuance

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

In this case, evidence shows that during the benefit period the State of Michigan paid a 3rd party \$ [REDACTED] in payments for Respondent's medical for which she was not entitled. Respondent was overissued MA benefits for which she is responsible to repay.

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 a first FAP IPV.
2. Respondent did receive an OI of MA program benefits in the amount of \$ [REDACTED]

The Department is ORDERED to:

Initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy for the MA program.

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

JS/nr



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
PO Box 30062
Lansing, MI
48909-7562

Wayne 18 County DHHS- via electronic
mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

DHHS

Sharnita Grant
25637 Ecorse Rd.
Taylor, MI
48180

Respondent

[REDACTED] - via first class mail
[REDACTED]
MI
[REDACTED]