



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 26, 2020
MOAHR Docket No.: 19-009730
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 22, 2020 from Detroit, Michigan. The Department was represented by Kelli Owens, Regulation Agent of the Office of Inspector General (OIG). Respondent appeared for the hearing and represented himself.

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Did Respondent receive an overissuance (OI) of FAP and Medical Assistance (MA) benefits that the Department is entitled to recoup?

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 was a recipient of FAP and MA benefits issued by the Department. The Department alleges that from [REDACTED] 2015 to [REDACTED], 2016 (fraud period), Respondent was issued [REDACTED] in FAP benefits and had [REDACTED] in MA

payments made on his behalf. The Department alleges that Respondent was entitled to \$0 in FAP and MA benefits during this time.

2. On [REDACTED] 2015, Respondent signed and submitted an application for FAP and MA benefits. In signing the application, Respondent acknowledged being aware of the responsibility to accurately report his circumstances and to report changes in his circumstances to the Department. (Exhibit A, pp. 10-40)
 - a. On the application, Respondent reported that he is getting food assistance that month, that he has a Bridge Card and that he is disabled receiving SSI and disability benefits.
 - b. In the section of the application regarding prior benefits, Respondent reported that on [REDACTED], 2015 he moved to Michigan from the state of Tennessee and that he received food assistance from Tennessee. He further included the additional comment that he just returned to Michigan from Tennessee and was seeking food assistance and health coverage in Michigan.
3. There was no evidence that Respondent had a physical or mental impairment that would limit his understanding of his responsibilities as they related to the FAP and MA program.
4. The Department alleges that Respondent was issued food assistance benefits from the State of Tennessee at the same time that he received FAP benefits issued from the State of Michigan.
5. This was Respondent's first alleged IPV and the Department has requested a 10 year disqualification from his participation in the FAP.
6. There was no evidence that Respondent received dual assistance of MA benefits from Michigan and Tennessee at the same time; however, the Department sought to recoup [REDACTED] in MA payments made on his behalf.
7. The Department's OIG filed a hearing request on or around [REDACTED], 2019, alleging that Respondent received benefits from two states at the same time and as a result, received FAP and MA benefits that he was ineligible to receive causing an OI.
8. 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), 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.

Intentional Program Violation

Effective October 1, 2014, the Department's OIG requests IPV hearings for cases involving alleged fraud of FAP benefits in excess of \$500. BAM 720 (October 2017), p. 5, 12-13. An IPV occurs when a recipient of Department benefits intentionally (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation FAP, FAP federal regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FAP benefits or electronic benefit transfer (EBT) cards. 7 CFR 273.16(c). For an IPV based on inaccurate reporting, Department policy requires that an OI, and all three of the following exist: the client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and the individual was also clearly and correctly instructed regarding his or her reporting responsibilities and the individual have no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 720, p. 1.

To establish an IPV, the Department must present clear and convincing evidence that the household member committed, and intended, to commit the IPV or intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. 7 CFR 273.16(e)(6); BAM 720, p. 1. 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; *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533, 541 (2010)

A person cannot receive FAP in more than one state for any month. BEM 222 (October 2016), p. 3; 7 CFR 273.16 (b)(5). The Department may verify out-of-state benefit receipt by: (i) DHS-3782, Out-of-State Inquiry; (ii) letter or document from the other state; or (iii) collateral contact with the state. BEM 222, p. 3-4.

In this case, the Department alleged that Respondent committed an IPV of the FAP because he received FAP benefits from the State of Michigan at the same time that he received food assistance benefits from the State of Tennessee. While the Department asserted that the period in which Respondent received benefits from the two states was [REDACTED] 2015 through [REDACTED] 2016, the Department presented a Benefit Summary Inquiry verifying Respondent's Michigan issued FAP benefits only from [REDACTED] 2016 to [REDACTED] 2016. The Department did not present any evidence of Respondent's Michigan FAP issuance prior to this time. An out of state inquiry with authorities in Tennessee indicates that Respondent was issued food assistance from [REDACTED] 2015 through [REDACTED] 2016, although the food stamp issuance history provided from Tennessee only shows issuances from [REDACTED] 2016 to [REDACTED] 2016.

In its Investigation Report, the Department, relying on Respondent's [REDACTED] [REDACTED], 2015 FAP and MA application, asserts that Respondent did not report that he received assistance in Tennessee and thus, committed an IPV. However, the Department is incorrect in this assertion. A review of the application shows that Respondent accurately disclosed that he is getting food assistance that month, that he has a Bridge Card, that on [REDACTED], 2015 he moved to Michigan from the State of Tennessee and that he received food assistance from Tennessee. He further included the additional comment that he just returned to Michigan from Tennessee and was seeking food assistance and health coverage in Michigan.

Upon review, Respondent accurately disclosed his circumstances to the Department and as such, the Department's evidence fails to establish by clear and convincing evidence that Respondent intentionally withheld or misrepresent his circumstances in order to obtain FAP benefits from two states at the same time. As such, the Department has failed to establish that Respondent committed an IPV of the FAP.

Disqualification

A client who is found to have committed an IPV by a hearing decision is disqualified from receiving program benefits for one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. 7 CFR 273.16(b)(1); BAM 720, p. 16. 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. BAM 720, p. 16; 7 CFR 273.16(b)(5). A disqualified recipient remains a member of an active group as long as he or she lives with them, and other eligible group members may continue to receive benefits. 7 CFR 273.16(b)(11); BAM 720, p. 16.

The Department has requested that Respondent be disqualified from the FAP for ten years. In order to apply the ten-year disqualification for concurrent receipt of benefits however, the Department must establish that the client made fraudulent statements

regarding identity or residency. BAM 720, p. 16. There was no evidence of such fraudulent statements regarding Respondent's identity or residency on the November 24, 2015 application. Furthermore, as discussed above, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of the FAP. Therefore, Respondent is not subject to disqualification from the FAP.

Overissuance

FAP OI

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p.1; 7 CFR 273.18(a)(2). The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. 7 CFR 273.18(c)(1); BAM 720, p. 8; BAM 715 (October 2017), p. 6; BAM 705 (October 2018), p. 6.

In this case, the Department alleged that Respondent received a [REDACTED] overissuance in FAP benefits for the period between [REDACTED] 2015 and [REDACTED] 2016. Respondent was not eligible for FAP benefits issued by the State of Michigan during any period he was issued food assistance benefits by the State of Tennessee. BEM 618, pp. 3-4; BEM 222, p. 3. The evidence showed that Respondent received food assistance benefits from the State of Tennessee during the period he received FAP benefits from the State of Michigan. The benefit summary inquiry presented by the Department showed that, Respondent received [REDACTED] in FAP benefits from the State of Michigan from [REDACTED] 2016 to [REDACTED] 2016. Because Respondent was not eligible for those benefits as he also received food assistance from Tennessee during this period, the Department is entitled to recoup \$[REDACTED] in overissued FAP benefits.

MA OI

The Department may initiate recoupment of an MA overissuance only due to client error or IPV, not when due to agency error. BAM 710 (October 2018), 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. 7. Agency error is caused by incorrect action (including delayed or no action) by Department staff or processes. BAM 700, pp. 4-5. The amount of an MA OI for an OI due to any reason other than unreported income or a change affecting need allowances is the amount of MA payments. BAM 710, pp. 1-2.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. Benefit duplication means assistance received from the same or same type of program to cover a person's needs for the same month. Concurrent receipt and benefit duplication are prohibited except in limited circumstances. BEM 222 (July 2013), p. 1. For MA cases, the Department is to assume an MA applicant is not receiving medical benefits from another state unless evidence suggests otherwise. Upon approval, the Department is to notify the other state's agency of the effective date of the client's medical coverage in Michigan. BEM 222, pp. 2-3. A person must be a Michigan resident to receive MA issued by the Department. BEM 220

(April 2018), p. 1. Additionally, for MA purposes, an individual is a Michigan resident if living in Michigan except for a temporary absence. Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished. BEM 220, pp. 1-2. /

At the hearing, the Department asserted that due to Respondent's dual receipt of FAP benefits, it was also entitled to recoupment of ██████ in MA payments made on Respondent's behalf from ██████, 2015 through ██████, 2016. There was no evidence that Respondent received MA from two states at the same time, as the out of state inquiry did not include any medical coverage. The OIG agent confirmed that Respondent did not receive dual or concurrent receipt of medical assistance coverage from Michigan and Tennessee.

Although the Department did not argue that Respondent lacked Michigan residency and would be ineligible for MA, there was also no evidence that presented that Respondent was not a resident of the State of Michigan during the fraud period, as the information on the application suggested that Respondent moved from Tennessee to Michigan to establish residency. Furthermore, the Department failed to present any evidence that Respondent was overissued MA benefits due to IPV or client error. The Department's evidence was insufficient to show that Respondent received MA benefits that he was not entitled to.

Based on the evidence presented, the Department is not eligible to recoup and/or collect from Respondent ██████, as there was no OI of MA benefits established.


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 not** established by clear and convincing evidence that Respondent committed an IPV of the FAP and thus, Respondent will not be disqualified from the FAP.
2. Respondent **did** receive an OI of FAP benefits in the amount of ██████.
3. Respondent **did not** receive an OI of MA benefits in the amount of \$█████1. The Department is ORDERED to delete the MA OI of ██████ and cease any recoupment action.

The Department is ORDERED to initiate recoupment/collection procedures for the FAP OI amount of [REDACTED] in accordance with Department policy, less any amount already recouped/collected.

ZB/tm



Zainab A. Baydoun
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

DHHS

Kimberly Kilmer
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49307

Petitioner

OIG
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48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

cc: IPV-Recoupment Mailbox
L. Bengel