



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: January 30, 2020
MOAHR Docket No.: 19-010093
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 23, 2020 from ██████████ Michigan. The Department was represented by Christopher Fechter, 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) 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 FAP and Program?

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 13, 2019 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by failing to disclose a change in residency.

2. The OIG **has** requested that Respondent be disqualified from receiving FAP benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent **was** informed of the responsibility to report changes in household circumstances to the Department.
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 periods it is considering the fraud period are May 2018 through August 2018 for the MA program and May 2018 through June 2018 for FAP (fraud period).
7. During the fraud period, Respondent was issued \$676.00 in FAP benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$676.00.
9. During the fraud period, the Department issued \$84.16 in MA payments on Respondent's daughter's behalf; and the Department alleges that Respondent's daughter was not entitled to the benefit of these payments during the fraud period.
10. The Department alleges that Respondent is responsible for an OI in MA benefits in the amount of \$84.16.
11. This was Respondent's **first** alleged IPV.
12. 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 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 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. 5, 12-13; ASM 165 (August 2016).

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. 8; 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, misrepresented information, or withheld facts or committed any act constituting a violation of Supplemental Nutritional Assistance Program (SNAP) regulations or State statutes for the **purpose** of establishing, maintaining, using, presenting, transferring, receiving, possessing, trafficking, increasing or preventing reduction of program benefits or eligibility. BAM 720, pp. 1, 12-13 (emphasis in original); 7 CFR 273.16(c) and (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 seeks an IPV due to Respondent's failure to report his and his family's change in residency outside of Michigan. In support of its allegations, the Department presented an IG-301 FAP transaction history to establish that Respondent used all of his Michigan-issued FAP benefits exclusively outside the State of Michigan beginning March 21, 2018. Instead, his FAP usage occurred in South Carolina. The use of FAP benefits outside of Michigan continued until the benefits were exhausted on June 26, 2018. The Department sought to verify Respondent's residency by a Work Number Report, his login history to his MiBridges account via an IP address log, and a Facebook account. The Work Number Report shows Respondent as being employed with Invista SARL as of March 26, 2018 at an address in [REDACTED] South Carolina. The Work Number shows that Respondent continued in this employment until July 9, 2018. Next, the Department reviewed Respondent's IP login address history for his MiBridges account. Between April 12, 2018 and June 30, 2018, Respondent logged into his MiBridges account six times from IP address locations in [REDACTED] South Carolina and Georgia. During one of those MiBridges account accesses, Respondent completed a Semi-Annual Contact Report on which he indicated that his address and

contact information had not changed; his income had not changed by more than \$100.00, and that he did not have a change in earnings. Respondent electronically signed the Semi-Annual Contact Report certifying that the statements in the form were true and correct to the best of his knowledge. Finally, the Department relied upon a Facebook account showing a profile name, which is the same as Respondent's legal name, as being from [REDACTED] Michigan, with a picture of a man and small little girl playing in the ocean. This account also shows that as of June 26, the account holder began a job at [REDACTED] South Carolina and was living in [REDACTED] South Carolina.

Federal Regulations provide with respect to FAP recipient's residency requirements state that:

- (a) *A household shall live in the State in which it files an application for participation.* The State agency may also require a household to file an application for participation in a specified project area (as defined in § 271.2 of this chapter) or office within the State. No individual may participate as a member of more than one household or in more than one project area, in any month, unless an individual is a resident of a shelter for battered women and children as defined in § 271.2 and was a member of a household containing the person who had abused him or her. Residents of shelters for battered women and children shall be handled in accordance with § 273.11(g). The State agency shall not impose any durational residency requirements. The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. Nor shall residency require an intent to reside permanently in the State or project area. Persons in a project area solely for vacation purposes shall not be considered residents.

7 CFR 273.3 (emphasis added). Federal regulations also provide that the State agency must develop an application to be used when applying for a recertification which can be a simplified version of the original application, a monthly reporting form, or other similar method. 7 CFR 273.14(b)(2) Signatures and dating is required at the time of application for recertification. *Id.* Department policy has included the Redetermination and Semi-Annual Contact Report as forms for the application for recertification.

Respondent's access to his MiBridges account from [REDACTED] South Carolina where he was actively working and using his FAP benefits at the time of the application for recertification (Semi-Annual Contact Report) is indicative of a change in Respondent's residence. Furthermore, Respondent answered the question on the form indicating he had no change in his address or contact information at the time that he signed it on May 29, 2018. Therefore, Respondent misrepresented his household circumstances to

the Department on the application for recertification. The most likely reason to misrepresent this information is to maintain his benefits from Michigan. Therefore, the Department has established an IPV of FAP.

The rules regarding residency are different for FAP cases than they are in MA cases. A Medicaid recipient, must be a Michigan resident, which is defined as an individual who is living in Michigan except for a temporary absence. BEM 220, p. 2. 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, p. 2. As an example, policy allows that individuals who spend the winter months in a warmer climate and return to their homes in spring, remain Michigan residents during the winter months. BEM 220, p. 2.

The Department has shown that Respondent was using his FAP benefits outside of Michigan for an extended period. The Department has also shown Respondent provided his employer with an address in South Carolina. Finally, the Department has shown that Respondent completed his Semi-Annual Contact Report in the same city that he identified to his employer for his residence. Respondent did not appear at the hearing to explain his family's absence. In addition, Respondent had an obligation to report the change in circumstances to the Department within 10 days of the change itself as well as on his Semi-Annual Contact Report. Respondent's failure to inform the Department of the change is 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, p. 15. 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. 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. 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, p. 16.

As discussed above, the Department has satisfied its burden of proof in establishing an IPV of the FAP. Therefore, the Respondent is subject to a period of disqualification from FAP for one year.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6; 7 CFR 273.18(c)(1).

FAP Overissuance

In this case, the Department sought the imposition of an IPV and an OI due to Respondent's lack of Michigan residency. As discussed above, the Department met its burden of proof that Respondent committed an IPV by misrepresenting his residency on his application for recertification (Semi-Annual Contact Report). Since Respondent was not a resident at the time of his application for recertification, he was not eligible for FAP benefits. The Benefit Summary Inquiry presented by the Department shows that Respondent received \$676.00 in FAP benefits between May and June 2018. Since the Department has established that he was not entitled to the benefit and committed an IPV, the Department has established an OI equal to the value of the benefits issued, \$676.00.

Medical Assistance Overissuance

The Department initiates MA recoupment of an overissuance (OI) due to client error or intentional program violation (IPV), not when due to agency error. BAM 710 (January 2018), p. 1. For an OI due to any other reason other than unreported income or a change affecting need allowances, the OI amount is the amount of MA payments. BAM 710, p. 2.

In this case, the Department alleges that an OI was present due to client error regarding Respondent's daughter's MA benefits. The Department alleges that Respondent failed to notify the Department that his family no longer resided in Michigan during the OI period May 2018 through August 2018, but that his daughter continued to receive the benefit of Michigan-issued MA benefits while living out of state. As discussed above, Respondent had an obligation to report changes in his family's residency for purposes of MA benefits; he also had an obligation to be truthful in his responses on the Semi-Annual Contact Report. In both cases, Respondent failed to report the change resulting in an IPV and a client error.

The Department established through capitation reports that the Department issued \$84.16 in MA benefits on behalf of Respondent's daughter. Since Respondent was not living in Michigan, did not report the change in residency, and failed to appear at the hearing to establish that the family's absence from Michigan was temporary, the Department has met its burden of proof in establishing an OI of MA benefits. The Department may recoup or collect an MA OI in the amount of \$84.16.

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 **received** an OI of FAP benefits in the amount of \$676.00 from the FAP.
3. Respondent **received** the benefit of an OI of MA benefits in the amount of \$84.16 from the MA program.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$84.16 in accordance with Department policy for MA benefits.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$676.00 in accordance with Department policy for FAP.

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



AMTM/jaf

Amanda M. T. Marler
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

Barbara Schram - 4
MDHHS-[REDACTED]-Hearings
L Bengel
Policy Recoupment

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
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[REDACTED] MI [REDACTED]