



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]

Date Mailed: February 26, 2020
MOAHR Docket No.: 19-013645
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 February 20, 2020, from Detroit, Michigan. The Department was represented by Monica Tardif, 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 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 [REDACTED], 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 was a recipient of FAP and MA benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in residency to the Department within 10 days.
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 for FAP benefits are January 1, 2019 through July 31, 2019 (FAP fraud period) and January 1, 2019 through July 31, 2019 for MA benefits (MA fraud period).
7. During the FAP fraud period, Respondent was issued \$1,862 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.
8. During the MA fraud period, the Department contributed \$1,652.65 in funds to provide Respondent MA benefits, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,862 and MA benefits in the amount of \$1,652.65.
10. This was Respondent's first alleged IPV.
11. 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 overissuances 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. 7; 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 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 intentionally: (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 MA and FAP benefits because she failed to notify the Department that she no longer resided in Michigan but continued to receive and use Michigan-issued FAP and MA benefits while out of state.

In support of its contention that Respondent committed an IPV, the Department presented an application submitted by Respondent on August 10, 2016. The Department asserts that when completing the application process, Respondent acknowledged that she had received the Information Booklet advising her regarding "Things You Must Do," which explained reporting changes in circumstances, including residency.

The Department also presented Respondent's IG-311 FAP transaction history to show Respondent began using her Michigan-issued FAP benefits in the State of Ohio beginning on March 31, 2018. Respondent used her Michigan-issued FAP benefits exclusively out of state until July 30, 2019.

The Department presented applications for food assistance benefits submitted to the State of Ohio on November 16, 2018 and July 10, 2019. Respondent reported to the State of Ohio that her residence was located in Toledo, Ohio. Also, the Department presented evidence that Respondent registered her vehicle in Ohio on November 1, 2019.

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). Based upon the above residency federal regulation, there is no requirement that an eligible household reside in Michigan, except at the time of application. In addition, there is no requirement that residency be based upon the recipient's intent to reside permanently in Michigan.

The evidence presented by the Department clearly shows that Respondent was living in Ohio. There was not sufficient evidence provided to show Respondent was permanently living in Ohio at the time the Michigan FAP application was submitted to the Department. The Department cited no federal requirement or regulation that prohibits out of state use of Michigan FAP benefits by a recipient.

BEM 220 requires that a person be a Michigan resident for FAP eligibility and provides that a person is a resident while living in Michigan for any purpose other than a vacation even if there is no intent to remain in the state permanently or indefinitely. BEM 220 (April 2018), p. 1. In order to be in compliance with the federal regulations, this rule can only apply at application. No evidence was presented that Respondent lacked Michigan residency at the time of the Michigan FAP application. BEM 212 also defines a temporary absence from a group as having lasted or expecting to last 30 days or less. BEM 212 (January 2017), p. 3. The Department has utilized this language under BEM 212 to establish a loss of residency, but it does not discuss residency for purposes of FAP eligibility, the policy discusses removal from a FAP group. In order for BEM 212 to be in compliance with federal regulations, that language cannot apply to residency. A FAP recipient is free to use their FAP benefits in any state. So long as there was no misrepresentation of residency at the time of application, there can be no IPV for failure

to maintain Michigan residency or failure to inform the Department about a change in residency.

Based upon the foregoing, the Department has not established that Respondent committed an IPV of the FAP program by clear and convincing evidence based upon a failure to report a change in residency in the FAP.

The Department alleges that there was also an MA OI due to client error or IPV because Respondent failed to report her change in residence. The Department testified that Respondent relocated to the State of Ohio, making her ineligible for MA benefits due to a lack of Michigan residency. To be eligible for MA coverage through the Department, a person must be a Michigan resident. BEM 220 (January 2016), p. 1; 42 CFR 435.403(a). For MA purposes, a Michigan resident is 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; 42 CFR 435.403(j).

As stated above, it is evident that Respondent relocated to Ohio. There was no evidence indicating Respondent intended to return to Michigan or that her relocation to Ohio was anything but permanent. The first indication that Respondent began residing in Ohio was that her FAP benefits were utilized exclusively in the State of Ohio beginning in March 2018. Respondent continued to receive MA benefits from the State of Michigan until July 2019, without notifying the Department of her relocation. Respondent allowed a significant period of time to lapse without notifying the Department of her relocation. 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 10 years for a FAP IPV involving concurrent receipt of benefits, 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; 7 CFR 273.16(b). 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 not satisfied its burden of proof in establishing an IPV of the FAP. Therefore, the Respondent is not subject to a period of disqualification from the FAP.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

FAP OI

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.

In this case, the Department sought the imposition of an IPV due to Respondent's lack of Michigan residency. As discussed above, the Department failed to establish that Respondent was ineligible for FAP due to lack of residency and did not establish an IPV. FAP clients are permitted the use of their FAP EBT benefits anywhere that SNAP benefits are accepted. Therefore, the Department has not established a FAP OI or that the Respondent received more benefits than she was entitled to receive.

MA OI

The Department also alleges a MA overissuance during the MA fraud period due to client error. The Department's right to seek an MA OI is only available if the OI is 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. A change in a client's MA case due to a change in residency requires timely notice. See BAM 220 (April 2017), pp. 3-6. Because the alleged MA overissuance was due to Respondent's failure to timely report her change in residency, the MA OI resulted from client error. Therefore, the Department could seek a recoupment of an MA overissuance based on client error if an overissuance is established.

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 behalf during the MA fraud period. The sum of these expenses is \$1,652.65. Therefore, the Department established it was entitled to recoup/collect \$1,652.65 from Respondent.

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:

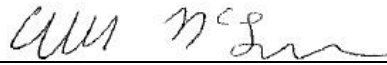
1. The Department has not established by clear and convincing evidence that Respondent committed an IPV concerning FAP.
2. Respondent did not receive an OI of FAP program benefits in the amount of \$1,862 during the FAP fraud period.
3. The Department has established an OI of MA program benefits of \$1,652.65 during the MA fraud period.

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

1. delete the FAP OI and cease any recoupment and/or collection action; and
2. initiate recoupment and/or collection procedures for the MA OI amount of \$1,652.65, less any amounts that have already been recouped and/or collected.

It is FURTHER ORDERED that Respondent is not disqualified from FAP for a period of 12 months.

EM/cg



Ellen McLemore

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

Via Email:

MDHHS-Washtenaw-20-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

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