



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: December 10, 2020
MOAHR Docket No.: 20-003817
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, telephone hearing was held on November 18, 2020. The Department was represented by Kelvin Christian, Regulation Agent of the Office of Inspector General (OIG). Respondent represented herself.

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 the Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from the Food Assistance Program (FAP)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On an application for assistance dated ██████████, 2018, Respondent acknowledged her duties and responsibilities including the duty to report changes of residency and the receipt of benefits from another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 11-16.
2. On a Redetermination (DHS-1010) form received by the Department on October 24, 2018, Respondent reported that she was living in Michigan and that she had not received any food assistance in another state. Exhibit A, p 74-81.

3. Respondent acknowledged under penalties of perjury that her October 24, 2018, Redetermination form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 80.
4. On October 22, 2018, Respondent signed a residential lease for a home in North Carolina for a term of October 22, 2018, through October 21, 2019. Exhibit A, pp 44-73.
5. On a Semi-Annual Contact Report (DHS-1046) received by the Department on April 2, 2019, Respondent reported that she was still living in Michigan and that there were no changes to her circumstances. Exhibit A, p 84.
6. Respondent began using her Michigan Food Assistance Program (FAP) benefits in North Carolina on December 21, 2018, and used them predominately in North Carolina through August 4, 2019, with some purchases in Georgia. Exhibit A, pp 19-22.
7. On [REDACTED], 2019, Respondent filed an application for food assistance and Medicaid with the state of North Carolina. Exhibit A, pp 27-31.
8. On [REDACTED], 2020, Respondent filed another application for food assistance and Medicaid with the state of North Carolina. Exhibit A, pp 32-27.
9. Respondent received Medicaid from the state of North Carolina from January 1, 2019, through December 31, 2020. Exhibit A, pp 23-26.
10. Respondent received food assistance from the state of North Carolina from January 4, 2019, through June 30, 2020. Exhibit A, pp 23-26.
11. Respondent received Food Assistance Program (FAP) benefits totaling \$1,080 from January 1, 2019, through June 30, 2019. Exhibit A, p 85.
12. Respondent received Medical Assistance (MA) with a value of \$3,436.98 from January 1, 2019, through June 30, 2019. Exhibit A, p 86.
13. The Department's OIG filed a hearing request on June 9, 2020, to establish that Respondent committed an Intentional Program Violation (IPV). Exhibit A, p 2.
14. On June 9, 2020, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$4,516.98 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-7 and 87-89.
15. This was Respondent's first established IPV.
16. 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), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396 through 42 USC 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 through 42 CFR 420.25. The Department administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.103 through MCL 400.112k of the Social Welfare Act, MCL 400.1 *et seq.*

The Food Assistance Program (FAP) is funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 through 7 USC 2036a. It is implemented by the federal regulations contained in 7 CFR 273. The Department administers FAP pursuant to MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq.*, and Mich Admin Code, R 400.3001 through 400.3011.

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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, or
 - the total OI amount is less than \$500, 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.

Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (October 1, 2017), pp 12-13.

Overissuance

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2018), p 1.

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. Benefit duplication is prohibited except for MA and FAP in limited circumstances. Department of Health and Human Services Bridges Eligibility Manual (BEM) 222 (October 1, 2018), p 3.

An individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to received multiple SNAP benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years. 7 CFR 273(b)(5).

On an application for assistance dated [REDACTED], 2018, Respondent acknowledged the duties and responsibilities of receiving MA and FAP benefits, including the duty to report the receipt of benefits from another state. Respondent reported that she was living in Michigan. Respondent again reported that she was living in Michigan on a Redetermination (DHS-1010) form received by the Department on October 24, 2018, and a Semi-Annual Contact Report (DHS-1046) received by the Department on April 2, 2019.

Respondent travelled to North Carolina, which was established by her use of her Michigan FAP benefits in North Carolina and Georgia from December 21, 2018, through August 4, 2019. On [REDACTED], 2019, Respondent filed an application for assistance with the state of North Carolina. Respondent filed another application for assistance with the state of North Carolina on [REDACTED], 2020.

Respondent failed to report that she received food assistance and Medicaid benefits from the state of North Carolina from January of 2019, through June of 2020. These benefits were used concurrently with her Michigan benefits. While Respondent was receiving food assistance from the state of North Carolina, she was also using her Michigan FAP benefits to make purchases in North Carolina.

Respondent received Michigan FAP benefits totaling \$1,080 from January 1, 2019, through June 30, 2019. Respondent failed to report that she was receiving food assistance from the state of North Carolina concurrently with her Michigan FAP benefits. Respondent was not eligible for any of the Michigan FAP benefits she received while concurrently receiving North Carolina food assistance. Therefore, Respondent received a \$1,080 overissuance of Michigan FAP benefits.

Respondent received Michigan MA benefits with a value of \$3,436.98 from January 1, 2019, through June 30, 2109. Respondent failed to report that she was receiving

Medicaid assistance from the state of North Carolina concurrently with her Michigan MA benefits. Respondent was not eligible for any of the Michigan MA benefits she received while concurrently receiving North Carolina Medicaid. Therefore, Respondent received a \$3,436.98 overissuance of Michigan MA benefits.

Intentional Program Violation

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; see also 7 CFR 273.16(e)(6).

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Respondent acknowledged the duties and responsibilities of receiving MA and FAP benefits on an application for assistance dated [REDACTED], 2018. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

While an active recipient of Michigan MA and FAP benefits, Respondent travelled to North Carolina and remained there for an extended period of time. Respondent's presence in North Carolina was confirmed by her exclusive use of her Michigan FAP benefits outside Michigan. While in North Carolina, Respondent applied for North Carolina food and Medicaid assistance. Respondent received North Carolina food and Medicaid assistance concurrently with her Michigan MA and FAP benefits, which resulted in an overissuance of Michigan MA and FAP benefits.

Respondent testified that she thought that her Michigan benefits would automatically close after filing an application for assistance with the state of North Carolina.

Respondent's statements are not supported by the hearing record because if she thought her Michigan benefits were closing then she would not have continued to use her Michigan FAP benefits in the state of North Carolina. Respondent failed to offer any evidence supporting her belief that her Michigan benefits would close automatically.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that the Respondent intentionally failed to report that she was receiving food and Medicaid from the state of North Carolina concurrently with her Michigan FAP and Michigan MA, for the purposes of maintaining her eligibility for Michigan FAP and MA benefits that she would not have been eligible for otherwise.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. A disqualified recipient remains a member of an active group as long as the disqualified person 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. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (January 1, 2018), p. 2. 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.

This Administrative Law Judge finds that a ten-year disqualification is appropriate in this case due to the concurrent receipt of food assistance in Michigan and North Carolina. Respondent intentionally failed to report information to the Department resulting in an overissuance of Michigan benefits. Further, Respondent made a fraudulent statement or representation with respect to place of residence when she filed her Semi-Annual Contact Report (DHS-1046) claiming to live in Michigan after moving to North Carolina and signing a residential lease in North Carolina. See 7 CFR 273(b)(5). A ten-year disqualification is the standard disqualification under these circumstances as directed by Department policy. BAM 720, p 16.

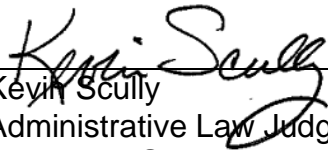
The Department has established an Intentional Program Violation (IPV).

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, concludes that:

1. The Department **HAS ESTABLISHED** by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of Food Assistance Program (FAP) benefits in the amount of \$1,080.
3. Respondent did receive an OI of Medical Assistance (MA) benefits in the amount of \$3,436.98.
4. The Department is **ORDERED** to initiate recoupment procedures for the amount of \$4,516.98 in accordance with Department policy.
5. It is **FURTHER ORDERED** that Respondent be personally disqualified from participation in the FAP program for **10 years**.

KS/nr



Kevin Scully
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

Keisha Koger-Roper
12140 Joseph Campau
Hamtramck, MI
48212

Wayne 55 County DHHS- via electronic
mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

Petitioner

OIG- via electronic mail
PO Box 30062
Lansing, MI
48909-7562

Respondent

██████████ - via first class mail
██████████
██████████ NC
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