



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED], MI [REDACTED]

Date Mailed: December 14, 2020  
MOAHR Docket No.: 20-003820  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED] [REDACTED]

**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 Brent Brown, 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 May 11, 2017, 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 9-39.
2. Respondent acknowledged under penalties of perjury that her May 11, 2017, application 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 20-21.

3. Respondent reported on her May 11, 2019, application for assistance that she was living in Michigan. Exhibit A, pp 9-39.
4. On September 28, 2018, Respondent filed an application for assistance with the state of Nevada. Respondent reported to the state of Nevada that she did not have any health/dental insurance from any source. Exhibit A, pp 40-49.
5. Respondent received food assistance from the state of Nevada from September 1, 2018, through May 7, 2019. Exhibit A, pp 50-53.
6. Respondent received medical assistance from September 1, 2018, through May 7, 2019. Exhibit A, pp 50-53.
7. On an application for assistance dated January 26, 2020, 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 63-77.
8. Respondent acknowledged under penalties of perjury that her January 26, 2020, application 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 64.
9. Respondent reported on her January 26, 2020, application for assistance that she was living in Michigan and that she was covered by the Health Plan of Nevada Medicaid. Exhibit A, pp 63-77.
10. The Respondent received Food Assistance Program (FAP) benefits totaling \$90 from September 1, 2018, through February 28, 2019. Exhibit A, p 58.
11. The Respondent received Medical Assistance (MA) with a value of \$3,614.17 from September 1, 2018, through February 28, 2019. Exhibit A, pp 59-62.
12. The Department's OIG filed a hearing request on June 8, 2020, to establish that Respondent committed an Intentional Program Violation (IPV). Exhibit A, p 2.
13. On June 8, 2020, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$3,704.17 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 5-6 and 79-80.
14. This was Respondent's first established IPV.
15. 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 receive 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 May 11, 2017, Respondent acknowledged 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.

On September 28, 2018, Respondent filed an application for food and medical assistance with the state of Nevada. Respondent's application was approved, and she was an active food and medical assistance recipient in Nevada from September of 2018, through May of 2019.

Respondent testified that she had gone to Nevada temporarily to care for her daughter. While Respondent was under no duty to report a temporary absence from Michigan, she was not entitled to receive food and medical assistance from both Michigan and Nevada at the same time. Respondent testified that she only used her Michigan benefits while in Michigan and used her Nevada benefits while in Nevada. Respondent's explanation is supported by the hearing record.

However, Respondent was not entitled to accumulate Michigan FAP benefits while in Nevada and receiving duplicate food assistance from the state of Nevada. Respondent was not entitled to any of the Michigan FAP benefits she received while concurrently receiving food assistance from the state of Nevada. Therefore, Respondent received a \$90 overissuance of Michigan FAP benefits.

Respondent was also a recipient of Michigan MA benefits from September 1, 2018, through February 28, 2019. Respondent was under no duty to report a temporary move to Nevada to care for her daughter, and she was entitled to keep her Michigan MA benefits while in Nevada for an extended period. Michigan 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, p2.

The Department may not deny or terminate a resident's Medicaid eligibility because of that person's temporary absence from the state if the person intends to return when the purpose of the absence has been accomplished, unless another State has determined that the person is a resident there for purposes of Medicaid. Where two or more States cannot resolve which State is the State of residence, the State where the individual is physically located is the State of residence. 42 CFR 435.043.

Respondent was not ineligible for her Michigan MA benefits because she left Michigan to care for her daughter but was not entitled to Michigan MA benefits after she applied for Nevada Medicaid. Department policy requires that MA benefits not be delayed, and that another state is to be notified of the effective date of the client's medical coverage in Michigan after a determination is made in Michigan. BEM 222, p 2.

Since Respondent was not entitled to have Michigan maintain her MA benefits in Michigan while receiving duplicate Medicaid benefits in Nevada, the Department is entitled to request reimbursement for the capitation costs incurred in maintaining the Michigan MA benefits that Respondent was not entitled to. Therefore, Respondent received a \$3,614.17 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 FAP and MA benefits on an application for assistance dated May 11, 2017. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Respondent was an active recipient of Michigan MA and FAP benefits when she travelled to Nevada and filed an application for duplicate food and Medicaid benefits. Respondent reported to the state of Nevada on her September 28, 2018, application form that she did not have any health/dental insurance available to her.

Respondent testified that she did not use her Michigan benefits while in Nevada and did not use her Nevada benefits while in Michigan. Respondent testified that she was in Nevada temporarily for the purposes of caring for her daughter.

The hearing record supports a finding that Respondent had temporarily travelled to Nevada for the purposes of caring for her daughter and that she intended to return to Michigan after the purpose of that trip was concluded. Respondent received an overissuance of FAP and MA benefits because she received duplicate benefits from the state of Nevada.

It is not unreasonable that Respondent may have applied for Nevada Medicaid because of the unavailability of medical providers in Nevada willing to accept Michigan MA coverage. Further, it is not unreasonable that Respondent may have not realized that her monthly \$15 allotment of Michigan FAP benefits continued to accumulate while she was temporarily in Nevada. Respondent was entitled to use her Michigan FAP benefits in Nevada even though she did not attempt to do so. Respondent was not entitled to receive duplicate food assistance from both states, and she received overissuance of those benefits.

This Administrative Law Judge finds that the Department has not presented clear and convincing evidence that the Respondent intentionally obtained duplicate medical and food assistance from Michigan and Nevada. If Respondent had reported her duplicate benefits, closure of her Michigan benefits would have been appropriate. The hearing record supports a finding that it was inadvertent household error that Respondent failed to report her duplicate medical and food assistance from the state of Nevada while temporarily located in Nevada, and that she reasonably believed that it was unnecessary to report this change of circumstances.

The Department has not established an Intentional Program Violation (IPV).


The Department has established an overissuance of Food Assistance Program (FAP) and Medical Assistance (MA) due to client error.

**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 NOT** 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 \$ 90 due to client error.
3. Respondent **DID** receive an OI of Medical Assistance (MA) benefits in the amount of \$3,614.17 due to client error.
4. The Department is **ORDERED** to initiate recoupment procedures for the amount of \$3,704.17 in accordance with Department policy.

KS/nr

  
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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**

Denise McCoggle  
27260 Plymouth Rd  
Redford, MI  
48239

Wayne 15 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**

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