



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: December 21, 2020
MOAHR Docket No.: 20-005314
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

The Michigan Department of Health and Human Services (Department) requested a hearing alleging that Respondent, [REDACTED], committed an Intentional Program Violation (IPV). Pursuant to the Department's request and in accordance with MCL 400.9, 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and Mich Admin Code, R 400.3130 and R 400.3178, this matter is before the undersigned Administrative Law Judge. After due notice, a hearing was held via telephone conference on December 16, 2020. Karrie Felenchak, Regulation Agent of the Office of Inspector General (OIG), represented the Department. Respondent was present and represented herself.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and Medical Assistance (MA) program 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 July 15, 2020, 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 and Respondent's child were recipients of FAP and MA benefits issued by the Department.
4. Respondent was made aware of the responsibility to report accurate information 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 period it is considering the fraud period for FAP benefits is January 15, 2019 through January 31, 2019 (FAP fraud period); January 1, 2019 through August 31, 2019 for Respondent's MA benefits (MA fraud period I) and December 1, 2018 through April 30, 2019 for Respondent's child's MA benefits (MA fraud period II).
7. During the FAP fraud period, Respondent was issued \$193 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 I, the Department contributed \$1,551 in funds to provide Respondent MA benefits, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period. During the MA fraud period II, the Department contributed \$1,044 in funds to provide Respondent's child MA benefits, and the Department alleges that Respondent's child 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 \$193 and MA benefits in the amount of \$2,595.62.
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 Services as undeliverable.

CONCLUSIONS OF LAW

The Department's policies are contained in the Department's 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 funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 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 to R 400.3031.

Intentional Program Violation

An IPV occurs when a recipient of Department benefits intentionally made a false or misleading statement, or misrepresented, concealed, or withheld facts. 7 CFR 273.16(c)(1). Effective October 1, 2014, the Department's OIG requests IPV hearings for cases where (1) the total repayment amount sought from Respondent for all programs combined is \$500 or more or (2) the total repayment amount sought from Respondent for all programs combined is less than \$500 but the group has a previous IPV, the matter involves concurrent receipt of assistance, the IPV involves FAP trafficking, or the alleged fraud is committed by a state government employee. BAM 720 (October 2017), pp. 12-13.

To establish an IPV, the Department must present clear and convincing evidence that the household member committed, and intended to commit, the IPV. 7 CFR 273.16(e)(6); BAM 720, p. 1. Clear and convincing evidence is evidence sufficient to result in "a firm belief or conviction as to the truth of the precise facts in issue." *Smith v Anonymous Joint Enterprise*, 487 Mich 102, 114-115; 793 NW2d 533 (2010); see also M Civ JI 8.01. Evidence may be uncontroverted and yet not be clear and convincing; conversely, evidence may be clear and convincing despite the fact that it has been contradicted. *Smith* at 115. The clear and convincing standard is "the most demanding standard applied in civil cases." *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995). For an IPV based on inaccurate reporting, Department policy also requires that the individual have been clearly and correctly instructed regarding the reporting responsibilities and have no apparent physical or mental impairment that limits the ability to understanding or fulfill these reporting responsibilities. 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: (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).

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she received Michigan-issued FAP benefits at the same time she was issued FAP benefits in Wisconsin and provided false information about the receipt of food benefits from Wisconsin. Under Department policy, a person **cannot** receive FAP

benefits in more than one state for any month. BEM 222 (March 2016), p. 2; see also 7 CFR 273.3(a).

Additionally, the Department alleges that Respondent was overissued MA benefits due to client error or IPV because she and her daughter received Michigan-issued MA benefits and at the same time they received medical benefits from the State of Wisconsin. Department policy provides that the Department may initiate recoupment of an MA OI 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. Benefit duplication is prohibited except for MA and FAP in limited circumstances. BEM 222, p. 1. The Department will assume an MA applicant is not receiving medical benefits from another state unless evidence suggests otherwise. BEM 222, p. 1. Upon approval, the Department will notify the other state's agency of the effective date of the client's medical coverage in Michigan. BEM 222, p. 2.

In support of its contention that Respondent committed an IPV, the Department presented an application submitted by Respondent on [REDACTED], 2019, in which she acknowledged that she received the Information Booklet advising of "Things You Must Do" (which explained reporting accurate information to the Department). Respondent reported on two separate occasions in the application that she had not received food assistance from another state within the previous 30 days. Respondent also did not report that she and her daughter were receiving any Medicaid benefits from another state.

The Department also presented documents retrieved from the State of Wisconsin. The documentation shows that Respondent and her daughter received food assistance benefits from the State of Wisconsin from December 19, 2018 through January 31, 2019. The information provided also shows that Respondent received medical assistance from the State of Wisconsin from December 2, 2018 to present (the information was received on August 21, 2019) and that her daughter received medical assistance from the State of Wisconsin from December 1, 2018 through April 30, 2019. The Department also presented Respondent's Wisconsin food assistance benefit usage report. The document shows that Respondent used her Wisconsin-issued food assistance in the State of Wisconsin until January 6, 2019.

The Department also presented Respondent's Michigan-issued FAP benefit history. The document shows that Respondent began using her Michigan-issued FAP benefits in January 2019 until May 2019, when she began using them exclusively in Georgia. The Department also presented an application for food assistance from the State of Georgia submitted by Respondent on [REDACTED], 2018.

Additionally, the Department presented Respondent's FAP benefit issuance summary showing Respondent received FAP benefits issued by the State of Michigan in January 2019. The Department also provided Respondent's and Respondent's child's Medicaid Summary Reports showing that Respondent received medical assistance from the State

of Michigan during the period of January 1, 2019 through August 31, 2019, and that her daughter received MA benefits issued by the State of Michigan from December 1, 2018 through April 30, 2019.

At the hearing, Respondent stated that she was not living in Wisconsin in 2018. Respondent stated she lived in Wisconsin from 2015 until 2017, when she moved to Georgia. Respondent stated she was living in Georgia in 2018. Respondent stated she was living in Georgia but would travel back and forth between Michigan and Georgia, as well as Georgia and Wisconsin. Respondent stated that she spent some time in Michigan, possibly around the time period when the [REDACTED], 2019 benefit application was submitted in Michigan. Respondent stated that at that time, she was not aware she was receiving benefits from Wisconsin. Respondent testified that she did not recall completing the [REDACTED], 2019 benefit application. Respondent stated that she is diabetic and is often hospitalized. Respondent stated that when she is hospitalized, if she does not have medical coverage, the hospital completes a Medicaid application on her behalf. Respondent contended that hospital staff members must have completed the [REDACTED], 2019 application.

Respondent testified that she was living in Georgia in 2018 but was temporarily visiting Michigan. Respondent reported in her [REDACTED], 2019 application that she was a resident of Michigan. Respondent stated she was not aware that she was receiving assistance from the State of Wisconsin when the [REDACTED], 2019 application was completed. However, Respondent's Wisconsin-issued food assistance benefit history shows she was consistently using her Wisconsin-issued food assistance from [REDACTED], 2018 until [REDACTED], 2019. Respondent stated that she moved from Wisconsin to Georgia in 2017 but her Wisconsin-issued food benefit use history shows she was consistently in the State of Wisconsin from November 2017 through June 2018. Respondent also testified that a hospital submitted the [REDACTED], 2019 application on her behalf. However, the application was not just for MA benefits for Respondent, but for FAP benefits, Family Independence Program (FIP) benefits and MA benefits for Respondent's child.

Respondent provided conflicting testimony during the hearing that contradicted her own statements. Respondent's testimony also conflicted with the evidence presented by the Department. Respondent's testimony was not credible. The evidence presented established that during the period of January 15, 2019 through January 31, 2019, Respondent received FAP issued by the State of Michigan, and at the same time, received food assistance from the State of Wisconsin. The evidence presented also shows that Respondent received MA benefits during the period of January 1, 2019 through August 31, 2019, and that she received medical assistance from Wisconsin during the same time period. Additionally, Respondent's child received MA benefits from the State of Michigan and the State of Wisconsin during the period of December 1, 2018 through April 30, 2019. Respondent was asked repeatedly on the [REDACTED], 2019 application if she was receiving benefits from another state, to which she falsely answered no. Thus, the Department established by clear and convincing evidence that

Respondent committed an IPV of FAP and MA benefits based on concurrent receipt of benefits, which is a violation of state and federal regulations.

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 ten years for a FAP IPV involving concurrent receipt of benefits where the client made fraudulent statement regarding identity or residency, 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; see also 7 CFR 273.16(b)(1) and (5). 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 established by clear and convincing evidence that Respondent committed an IPV through concurrent receipt of food assistance benefits from two states at the same time. The Department did not seek the imposition of a 10-year disqualification. Therefore, Respondent is subject to the standard 12-month disqualification from the receipt of FAP benefits.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1; 7 CFR 273.18.

FAP OI

At the hearing, the Department established that the State of Michigan issued a total of \$193 in FAP benefits to Respondent during the fraud period. The Department alleges that Respondent was eligible for \$0 in FAP benefits during this period.

As previously stated, the Department presented evidence from the State of Wisconsin which revealed that Respondent received FAP benefits during the FAP fraud period. The Department also presented the benefits issuance summary, which revealed that Respondent received Michigan FAP benefits during the same months. Respondent was not eligible for FAP benefits issued by the State of Michigan during any period she was issued food assistance benefits by the State of Wisconsin. BEM 222, p. 3; 7 CFR 273.3(a). Therefore, the Department has established it is entitled to recoup the \$193 in FAP benefits it issued to Respondent during the FAP fraud period.

MA OI

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 a Medicaid Summary showing the total MA

payments made by the Department on Respondent and Respondent's child's behalf during the MA fraud period I and II. The sum of these expenses is \$2,595.62. Therefore, the Department is entitled to recoup and/or collect from Respondent an MA OI of \$2,595.62 during the fraud period.

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 concerning FAP and MA.
2. Respondent did receive an OI of FAP program benefits in the amount of \$193 during the FAP fraud period.
3. The Department has established an OI of MA program benefits of \$2,595.62 during the MA fraud period I and II.

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

1. initiate recoupment and/or collection procedures for the FAP OI amount of \$193, less any amounts that have already been recouped and/or collected; and
2. initiate recoupment and/or collection procedures for the MA OI amount of \$2,595.62, less any amounts that have already been recouped and/or collected.

It is FURTHER ORDERED that Respondent is subject to a one-year disqualification from FAP benefits.

EM/jem



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-Wayne-15-Greydale-Hearings
MDHHS-OIG-Hearings
Policy-Recoupment
L. Bengel
MOAHR

Respondent – Via First-Class Mail:

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