



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] TN [REDACTED]

Date Mailed: January 14, 2020
MOAHR Docket No.: 19-006171-RECON
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

ORDER GRANTING REQUEST FOR RECONSIDERATION
AND
DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to the request for rehearing and/or reconsideration the Department of Health and Human Services (Department) of the Hearing Decision issued by the undersigned at the conclusion of the hearing conducted on [REDACTED] 2019, and mailed on [REDACTED] 2019, in the above-captioned matter.

In the Hearing Decision, it was found that the Respondent received an overissuance (OI) of Food Assistance Program (FAP) benefits in the amount of [REDACTED] as well as an OI of Medical Assistance (MA) benefits in the amount of [REDACTED] and ordered the Department to initiate recoupment procedures for the total amount of [REDACTED] in accordance with Department policy.

On [REDACTED] 2019, the Department submitted a timely request for reconsideration and/or rehearing. The rehearing and reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program that is the basis for the client's benefits application or services at issue and may be granted so long as the reasons for which the request is made comply with the policy and statutory requirements. A rehearing is a full hearing which may be granted if the original hearing record is inadequate for purposes of judicial review or there is newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision. BAM 600 (July 2019), p. 44. A reconsideration is a paper review of the facts, law or legal arguments and any newly discovered evidence that existed at the time of the hearing and may be granted when the original hearing record is adequate for purposes of judicial review and a rehearing is not necessary, but one of

the parties is able to demonstrate that the Administrative Law Judge misapplied manual policy or law in the hearing decision, which led to the wrong decision; issued a Hearing Decision with typographical errors, mathematical errors, or other obvious errors that affect the substantial rights of the petitioner; or failed to address other relevant issues in the hearing decision. BAM 600, p. 45.

In the request, the Department alleged that the undersigned issued a Hearing Decision with typographical errors, mathematical errors, or other obvious errors that affect the Petitioner's substantial rights.

Because the Department alleges that the undersigned incorrectly stated in the Decision and Order portion of the Hearing Decision that Respondent received an OI of FAP benefits in the amount of [REDACTED] instead of MA benefits in the amount of [REDACTED], a basis for reconsideration is established. Therefore, the request for reconsideration is **GRANTED**. **The only change to the original Hearing Decision is to identify the correct program and amount in which the OI has been requested and established.** The Decision and Order of Reconsideration follows a full review of the case file, all exhibits, the hearing record and applicable statutory and policy provisions.

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 benefits for the FAP and Medical Assistance (MA) 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 [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 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 household circumstances to the Department within ten 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 period it is considering the fraud period is [REDACTED] 2017 through [REDACTED] 2018 (fraud period).
7. During the fraud period, Respondent was issued [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED].
9. During the fraud period, Respondent was issued [REDACTED] in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] in such benefits during this time period.
10. The Department alleges that Respondent received an OI in MA benefits in the amount of [REDACTED].
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 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.

7 CFR 273.16(c); 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.

FAP IPV

The Department alleges that Respondent committed an IPV of her FAP and MA benefits because she received Michigan-issued FAP and MA benefits at the same time she was issued FAP and MA benefits in Tennessee. Under Department policy, a person **cannot** receive FAP in more than one state for any month. BEM 222 (October 2016), p. 2. In support of its contention that Respondent committed an IPV, the Department presented an application submitted by Respondent on July 11, 2017 in which she acknowledged that she received the Information Booklet advising of "Things You Must Do" (which explained reporting change circumstances, including residency). The Department indicated that Respondent received Michigan FAP benefits during the fraud period.

The Department presented an IG-311 FAP transaction history to establish that Respondent used all of her Michigan issued FAP benefits exclusively outside the State of Michigan from [REDACTED] 2017 through [REDACTED] 2018 with the exception of March 3, 2018, [REDACTED] 2018 and [REDACTED] 2018 in which she used her FAP benefits in Michigan. The Department also presented correspondence from a representative from the [REDACTED] Department of Human Services which indicated that Respondent was receiving Supplemental Nutritional Assistance Program (SNAP) benefits in [REDACTED] from [REDACTED] 2017 through [REDACTED] 2018, the date of the correspondence. SNAP is the Federal name for the FAP which Tennessee also uses.

Respondent knew or should have known that she was not entitled to receive FAP benefits from more than one state especially given that this information is asked at the time of application. At the time Respondent applied for benefits in Tennessee, she was receiving FAP and MA benefits in Michigan. If a client only received FAP benefits from multiple states for only one or two months, perhaps doubt can be raised concerning whether a client intended to receive duplicate benefits. For clients receiving FAP benefits from multiple states for a period of 6 months, there is less uncertainty that the client intended to receive the duplicate benefits. Accordingly, it is found that the Department has established that Respondent intentionally misled the Department for the purpose of maintaining FAP program benefits.

MA IPV

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 her FAP benefits outside of Michigan for an extended period. The Department has also shown that Respondent received SNAP benefits in Tennessee during the fraud period. Respondent's exclusive use of FAP benefits outside of Michigan and concurrent receipt of benefits in Tennessee shows that she was absent from Michigan for such an extended period that she lost his Michigan residency for MA purposes unless Respondent can show that the absence was temporary. Respondent did not appear at the hearing to explain her absence. In addition, Respondent had an obligation to report her change in circumstances to the Department within ten days of the change itself. She was informed of this obligation at the time of her application. Respondent's failure to inform the Department of the change is an IPV of the MA program.

Disqualification

The Department contended a ten-year disqualification was justified. The contention was based solely on Respondent's receipt of FAP benefits from multiple states. A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720 (October 2015), p. 15. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, 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)(1).

For a ten-year disqualification, the Department must establish that Respondent purposely misrepresented residency (or identity). The Department did not allege that Respondent misreported her residency. The Department appeared to allege that Respondent only failed to report a change in state of residency. According to the correspondence provided by a representative in Tennessee, Respondent confirmed that she was a resident of Tennessee. The Department did not provide any evidence to show that Respondent was not living in Michigan at the time she submitted the July 2017 application. Further, the Department did not provide any evidence that Respondent submitted either an application or Redetermination stating that she resided in Michigan during the fraud period.

For purposes of determining the length of IPV disqualification, a failure to report a change of residency state or receipt of out-of-state FAP benefits does not equate to a fraudulent misrepresentation of residency or identity. It is found the Department failed to establish a basis for a ten-year disqualification against Respondent. Accordingly,

Respondent is not subject to a ten-year disqualification under the FAP program. However, because the standard disqualification for an IPV is one year and it has been found that Respondent committed an IPV, she is subject to a 12-month disqualification.

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

At the hearing, the Department established that the State of Michigan issued a total of [REDACTED] in FAP benefits to Respondent during the fraud period. The Department alleges that Respondent was eligible for \$0.00 in FAP benefits during this period.

As previously stated, the Department also presented evidence from the State of [REDACTED] which revealed that Respondent received FAP benefits from [REDACTED] 2017 at least until [REDACTED] 2018 as well as the benefits issuance summary which revealed that Respondent received Michigan FAP benefits during the same months. The evidence provided at the hearing clearly demonstrates that Respondent simultaneously received benefits from Michigan and [REDACTED] during the fraud period. Therefore, the Department has established it is entitled to recoup the [REDACTED] in FAP benefits it issued to Respondent during the fraud period.

MA 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 MA benefits. The Department alleges that Respondent failed to notify the Department that she no longer resided in Michigan during the OI period [REDACTED] 2017 through [REDACTED] 2018, but that she continued to receive MA benefits from Michigan while she was out-of-state. As discussed above, Respondent had an obligation to report changes in her residency for purposes of MA benefits but failed to report the change resulting in an IPV and a client error.

The Department established through capitation reports that Respondent was issued [REDACTED] in MA benefits. Since Respondent was not living in Michigan, did not report her change in residency, and failed to appear at the hearing to establish that her 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 the MA OI of [REDACTED]

DECISION AND ORDER

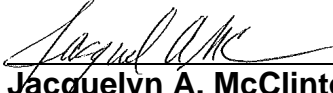
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV of FAP benefits.
2. Respondent did receive an OI of program FAP benefits in the amount of [REDACTED]
3. The Department has established by clear and convincing evidence that Respondent committed an IPV of MA benefits.
4. Respondent did receive an OI of program MA benefits in the amount of [REDACTED]

The Department is ORDERED to initiate recoupment procedures for the total amount of [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent is subject to a 12-month disqualification from FAP benefits.

JAM/tlf



Jacquelyn A. McClinton
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-Hamtramck-55-Hearings
OIG Hearing Decisions
Recoupment
MOAHR

Via First-Class Mail:

[REDACTED]
[REDACTED], TN [REDACTED]