



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], MI [REDACTED]

Date Mailed: January 13, 2020
MOAHR Docket No.: 19-009505
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

HEARING DECISION FOR CONCURRENT BENEFITS
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 Regulations, particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on January 9, 2020, from Lansing, Michigan. The Department was represented by Dawn O'Dell, 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).

Respondent's Exhibits were admitted as evidence.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP); Family Independence Program (FIP); 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 and FIP?

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 August 21, 2019 to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP, FIP and MA benefits issued by the Department.
4. On the DHS-1171 Assistance Application signed by Respondent on [REDACTED], 2016, Respondent acknowledged the rights and responsibilities of being on public assistance.
5. Respondent was aware of the responsibility to report changes in residence to the Department.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. Respondent worked with [REDACTED] October 17, 2016-March 3, 2017 and [REDACTED] [REDACTED] form May 22, 2017-April 30, 2018.
8. Respondent failed to report earned income in a timely manner.
9. From August 1, 2017-February 28, 2018, Respondent received \$2239.89 in MA benefits and was entitled to receive \$0, resulting in an overissuance of \$2239.89 in MA benefits.
10. From January 1, 2017-March 31, 2017, Petitioner receive FAP in the amount of \$843.00 and was entitled to receive \$181.00, resulting in an overissuance of \$662.00 in FAP benefits.
11. From January 1, 2017-March 31, 2017, Respondent received \$1209.00 in FIP benefits and was entitled to receive \$585.00, resulting in an overissuance of \$805 in FIP benefits.
12. This was Respondent's first alleged IPV.
13. 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

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), and Department of Health and Human Services Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101 to .3131.

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 of Health and Human Services (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:

- 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 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.

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. 6; BAM 720

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, (emphasis in original); see also 7 CFR 273(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.

Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. BAM 720. 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.

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 or FAP. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710. 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.

Overissuance

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

The Administrative Law Judge finds:

Respondent submitted a DHS-1171 Application for Assistance, FIP and FAP, [REDACTED], 2016 on which her signature acknowledged the rights and responsibilities of being on public assistance. Subject applied for herself and granddaughter (HH2) with no income. Subsequently, approved for FAP and FIP. A DHS-1605 Notice of Case Action was sent to Respondent on June 24, 2016 informing her she was approved for FAP as well as explaining the reporting requirements for earned income. A DHS-1605 Notice of Case Action was sent to Respondent July 19, 2016 informing her she was approved for FIP as well as explaining the reporting requirements for earned income.

The Work Number verifies Respondent started employment with [REDACTED] October 17, 2016, (first paycheck November 03, 2016), stopped employment March 03, 2017.

Respondent applied for MA using a DCH-1426, Application for Health Care Coverage and Help for Paying Costs, [REDACTED], 2017. Respondent lists herself as in the household along with claiming a dependent, AM (grandchild). This resulted in a household size of two from May 10, 2017 through April 30, 2018. Respondent was mailed a MDHHS-1606, Notice of Case Action, on May 12, 2017 informing her she was approved for MA as well as explaining the reporting requirements for earned income.

The Work Number verifies Respondent started employment with [REDACTED] [REDACTED] May 22, 2017, first paycheck June 02, 2017 and continued with employment through April 30, 2018. Respondent was over the income limit for MA from August 01, 2017-October 31, 2017, December 01, 2017-February 28, 2018 for a total of \$2239.89 (capitations and fee for service).

The Recoupment Specialist completed an over issuance budget for FAP and FIP July 09, 2018. Overissuance period from January 01, 2017 through March 31, 2017. Respondent was issued \$843 in FAP, eligible for \$181, over issuance of \$662, FIP issuance \$1209, eligible for \$404, overissuance of \$805.

A review of EPPIC EBT FAP/FIP Usage History shows the subject utilized the FAP/FIP benefits issued during the fraud period January 01, 2017 through March 31, 2017.

The Department has established by clear and convincing evidence that Respondent received an overissuance of benefits of Food Assistance Program, Family Independence Program and Medical Assistance Program benefits as a result of an Intentional Program Violation.

DECISION AND ORDER

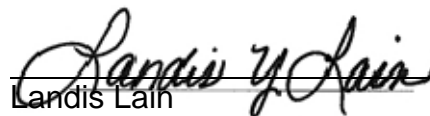
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV for FIP, FAP and MA.
2. Respondent did receive an OI of Food Assistance Program benefits in the amount of \$662.00.
3. Respondent did receive an OI of Family Independence Program benefits in the amount of \$805.00
4. Respondent did receive an OI of Medical Assistance in the amount of \$2239.89.

The Department is **ORDERED** to initiate recoupment/collection procedures in the amount of \$3706.89 in accordance with Department policy.

It is **FURTHER ORDERED** that Respondent be personally disqualified from participation in the FAP and FIP programs for one year beginning January 9, 2020.

LL/nr



Landis Lain
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

Petitioner

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

Oakland 4 County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

DHHS

Yaita Turner
51111 Woodward Ave 5th Floor
Pontiac, MI
48342

Respondent

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