



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: May 14, 2020
MOAHR Docket No.: 19-012254-RECON
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 by Petitioner, Michigan Department of Health and Human Services Office of Inspector General, (Department), of the Hearing Decision issued by the undersigned at the conclusion of the hearing conducted on February 24, 2020, and mailed on February 26, 2020, in the above-captioned matter.

In the Hearing Decision, it was found that the overissuance amount to be recouped/collected regarding the Medical Assistance benefits was \$3,366.87.

On March 4, 2020, 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 (October 2017), 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, pp. 44-45.

In the request for reconsideration, the Department alleged that the undersigned issued a Hearing Decision which contained a typographical error with respect to the amount the Department was entitled to recoup/collect. In the Hearing Decision, the undersigned ruled that Respondent [REDACTED] did receive an overissuance for MA program benefits in the amount of [REDACTED]. However, the Department in the case as presented requested an MA overissuance in the amount of [REDACTED]. The Department alleged therefore 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 an error in the MA overissuance and has identified the typographical error at issue, a basis for reconsideration is established. Therefore, the request for reconsideration is **GRANTED**.

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 and pertains to the Medical Assistance portion of the Hearing Decisions only as set forth below.

DECISION AND ORDER OF RECONSIDERATION

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent receive an OI for Medical Assistance (MA) Program benefits that the Department is entitled to recoup?
3. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of his FAP benefits?
4. Should Respondent be disqualified from receiving benefits for FAP Benefits?

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 October 31, 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 FAP program benefits.
3. Respondent was a recipient of FAP and MA benefits issued by the Department. The Respondent filed an application in Michigan on [REDACTED] 2017, for MA benefits and FAP which he continued to receive through [REDACTED] 2018.
4. In his application for FAP and MA, Respondent listed his address as [REDACTED] Michigan. Exhibit A, p. 33. The Respondent also listed all his children and his wife as residents of Michigan and lists that his car is registered in [REDACTED] and that he was self-employed doing [REDACTED] and [REDACTED]. Exhibit A, p. 49.
5. The Respondent was asked in his [REDACTED] 2017 application if he or anyone else in his family had Family Health Coverage to which he answered "no" for himself and all his family members.
6. The Respondent and his wife and [REDACTED] minor children began to receive MA on [REDACTED] 2017 through [REDACTED] 2018. Exhibit A, p. 49.
7. At the time of the Respondent's Michigan MA application on [REDACTED] 2017, the Respondent had an open case in the state of [REDACTED] for Medicaid benefits which he did not disclose on his Michigan application. The Respondent applied for MA in [REDACTED] on [REDACTED] 2017, and was determined eligible for benefits as of [REDACTED] 2017, and continued to receive MA benefits in Ohio for himself and his family through [REDACTED] 2018, when the benefits ended. Exhibit A, pp. 22-28. See also Findings of Fact, paragraph 5, above.
8. The Department seeks to recoup/collect the following MA overissuances totaling [REDACTED] from Respondent:
 - a. [REDACTED] (Respondent), [REDACTED] Exhibit A, p. 77
 - b. [REDACTED] (wife), [REDACTED] p. 81
 - c. [REDACTED] (son) [REDACTED] p. 84
 - d. [REDACTED] (son), [REDACTED], p. 90
9. While in Michigan, Respondent received medical services in [REDACTED] and [REDACTED] 2017 in the amount of [REDACTED]

10. The Respondent received FAP benefits of [REDACTED] monthly through [REDACTED] 2018. The Respondent used his Electronic Benefits Transfer (EBT) card in Michigan beginning [REDACTED] 2017 through [REDACTED] 2017. The Respondent began to use his Michigan FAP benefits in [REDACTED] beginning [REDACTED] 2017 through [REDACTED] 2018. Exhibit A, pp. 97-100.
11. The Respondent filed an application for FAP benefits on [REDACTED] 2017, in Michigan. The Respondent began to receive FAP benefits beginning [REDACTED] 2017 through [REDACTED] 2018. Exhibit A, p. 76.
12. The Respondent applied for MA in the state of [REDACTED] on [REDACTED] 2017 and began receiving MA assistance on [REDACTED] 2017 through [REDACTED] 2018. Exhibit A, pp. 24-25
13. Respondent **was** aware of the responsibility to report his receipt of MA benefits in [REDACTED] when applying for MA benefits in Michigan as he was specifically asked to do so in his MA application.
14. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
15. The Department's OIG indicates that the time period it is considering the fraud period is for FAP is [REDACTED] 2018 through [REDACTED] 2018 (fraud period).
16. 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.
17. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED]
18. This was Respondent's **first** alleged IPV.
19. 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 (January 2016), 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.

IPV is also suspected when there is 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 700 (October 2016), pp. 7-8; 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 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). 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.

Food Assistance Program IPV

In this case, the Department alleges that Respondent committed an IPV of his FAP benefits when he used his FAP benefits outside the State of Michigan after applying for FAP benefits on [REDACTED] 2017. At the time of the application, Respondent listed his address as [REDACTED] Michigan [REDACTED]. The Respondent used his Michigan EBT card in Michigan beginning [REDACTED] 2017 through [REDACTED] 2017. The Respondent began to use his Michigan FAP benefits in [REDACTED] beginning [REDACTED] 2017 through [REDACTED] 2018. Exhibit A, pp. 97-100.

For purposes of a recipient of FAP, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if they have no intent to remain in the state permanently or indefinitely. In addition, federal regulations regarding residency provide that a household shall live in the State in which it files an application for participation and further requires that the State shall not impose any durational residency requirements. Nor shall residency require an intent to reside permanently in the State. The only prohibition on receipt of benefits is for a person solely in the state for vacation purposes shall not be considered a resident. 7 CFR 273.3(a) and (b). Department policy also provides that to be eligible a person must be a resident and for FAP, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. BEM 220 (January 2016), p. 1. In this case, at the time of Respondent's application, the Respondent was a resident of Michigan as there was no evidence he

was not living in Michigan and thus, was fully eligible to receive benefits as he was not receiving FAP benefits from any other state. There was no evidence presented that he misrepresented his resident status of address on the application. The evidence demonstrated that Respondent continued to use his FAP benefits in Michigan from [REDACTED] 2017 through [REDACTED] 2017. The Respondent began to use his Michigan FAP benefits in [REDACTED] beginning [REDACTED] 2017 through [REDACTED] 2018 when he stopped using his Michigan FAP benefits. The Department asserted that the Respondent's failure to report his change of residency timely, required a finding that Respondent failed to report so he could continue to receive FAP benefits. Here the period of out-of-state use does not establish per se that Respondent was no longer living in Michigan, nor do the federal regulations require that a FAP recipient use the Michigan FAP benefits exclusively in Michigan there being no prohibition that FAP benefits cannot be used out of state. The Respondent did not misrepresent any eligibility facts at the time of application. Based on these facts, no IPV is established by clear and convincing evidence that Respondent's actions using his FAP benefits out of state was an intentional program violation.

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. 16. 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. 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. 17.

In this case because the Department has not established an IPV by clear and convincing evidence the Department is not entitled to a finding of disqualification of the Respondent for an IPV.

Overissuance

In this case the Department did not establish an IPV for FAP benefits and thus no overissuance was established based on an intentional program violation.

Medical Assistance Recoupment of Overissuance due to Client Error

In this case, the Department seeks recoupment of MA benefits received by the Respondent and his family from the State of Michigan. The Department has not requested an IPV with respect to the Respondent's receipt of MA benefits in Michigan but does seek recoupment of those benefits. In his [REDACTED] 2017 application, the Respondent was asked in the section regarding medical assistance whether he or anyone in his family had Family Health Coverage, to which he answered "no". Notwithstanding the answer, the Respondent and his family members were receiving Medicaid from the state of Ohio at the time of the Michigan application. The Department seeks recoupment due to the Respondent receiving MA benefits concurrently in Ohio and Michigan and contends that the Respondent was not eligible

for MA benefits at the time of his application as he was not eligible to receive duplicate, concurrent MA Benefits.

Department policy in BEM 222 provides that for all benefit programs, Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. Certain restrictions apply. Benefit duplication means assistance received from the **same** (or same **type** of) program to cover a person's needs for the same month. For example, FIP from Michigan and similar benefits from another state's cash assistance program. Benefit duplication is prohibited **except** for Medicaid and FAP in limited circumstances. BEM 222 (October 2016), p. 1. For Medicaid, Department policy provides that one is to assume a Medicaid applicant is **not** receiving medical benefits from another state unless evidence suggests otherwise. Do **not** delay the Medicaid determination. Upon approval, notify the other state's agency of the effective date of the client's medical coverage in Michigan. BEM 222, p. 2. In this case, after approving Respondent for MA benefits in Michigan, the Department OIG received information that Respondent and his family were receiving MA in the State of [REDACTED] at the time of the Michigan application and did not disclose the receipt of benefits. The State of Michigan received information from a source called Paris Match indicating that Respondent was receiving MA benefits from Ohio at the time he applied for MA benefits in Michigan and did not disclose his [REDACTED] benefits. Thus, at the time of the Michigan application, the Respondent was not eligible for Michigan MA benefits as he was receiving duplicate benefits, which had he disclosed would have resulted in his application for Michigan MA benefits to be denied. He would not be eligible until he was no longer receiving benefits from [REDACTED]. As such, this was a client error; and Respondent received an overissuance (OI) of MA benefits that the Department is entitled to recoup/collect.

In this case, the Department has alleged that a client error is present in this situation because Respondent failed to notify the Department of his eligibility for MA assistance in the State of Ohio at the time of his application for MA benefits in Michigan. As previously set forth above, the Department's Investigation Report demonstrated that Respondent received duplicate benefits from Ohio and Michigan and would not have received Michigan benefits had he disclosed his Ohio MA benefits.

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. When the Department receives the amount of MA payments, it determines the OI amount. BAM 710, p. 1. For an OI due to unreported income or a change affecting need allowances:

- If there would have been a deductible or larger deductible, the OI amount is the correct deductible (minus any amount already met) or the amount of MA payments, whichever is less.
- If there would have been a larger LTC, hospital or post-eligibility patient-pay amount, the OI amount is the difference between the correct and incorrect patient-pay amounts or the amount of MA payments, whichever is less.

BAM 710, p. 2. For an OI due to any other reason, the OI amount is the amount of MA payments. BAM 710, p. 1- 2.

In this case, the Department provided proofs of the costs it incurred for the MA benefits (amount of the MA payments) referred to as the capitation rates, and presented these costs for each of the MA group members who received MA benefits due to client error. The capitation rates cover the costs of insurance incurred by Michigan to cover the individual receiving benefits contained in the Medicaid Summary Reports for each group member. The costs the Department seeks to collect are as follows:

- a. [REDACTED] (Respondent), [REDACTED], Exhibit A, p. 77
- b. [REDACTED] (wife), [REDACTED], Exhibit A, p. 81
- c. [REDACTED] (son), [REDACTED], Exhibit A, p. 84
- d. [REDACTED] (son), [REDACTED], Exhibit A, p. 90

The total overissuance sought is [REDACTED] for Respondent's MA group.

A **client error** occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department.

A client error also exists when the client's timely request for a hearing result in deletion of a MDHHS action, **and any of the following occurred:**

- The hearing request is later withdrawn.
- MAHS denies the hearing request.
- The client or administrative hearing representative fails to appear for the hearing and MAHS gives MDHHS written instructions to proceed.
- The hearing decision upholds the department's actions; see BAM 600. BAM (October 2018), p.7

In this case, the Department demonstrated that Respondent was ineligible for MA benefits at the time of the application due to already receiving MA benefits in Ohio at the time of the Michigan MA application. Thus, the Department has satisfied its burden of showing that Respondent received an OI for MA benefits in the amount of [REDACTED] due to client error and that the Department is entitled to collect.

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:

Food Assistance

1. The Department **has not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did not** receive an OI of program benefits in the amount of [REDACTED] from the following program(s) FAP program.

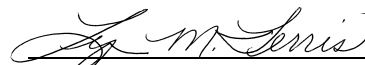
The Department is ORDERED to delete the FAP OI and cease any recoupment action.

Medical Assistance:

1. The Respondent did receive an OI for MA program benefits in the amount of [REDACTED]

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

LMF/



Lynn M. Ferris
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-41-Hearings
OIG Hearing Decisions
Recoupment
MOAHR

Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]