



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED], NC [REDACTED]

Date Mailed: March 25, 2020
MOAHR Docket No.: 19-013007
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [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 February 25, 2020, from Lansing, Michigan. The Department was represented by Courtney Burnell, 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).

ISSUES

1. Did Respondent receive an overissuance (OI) of Medical Assistance (MA) and Food Assistance Program (FAP) 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 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 [REDACTED], 2017, Respondent acknowledged the duties and responsibilities of receiving Medical Assistance (MA) and Food Assistance Program (FAP) benefits. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 16-54.

2. Respondent acknowledged under penalties of perjury that her July 12, 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, pp 35-36.
3. Department records indicate that Respondent filed her [REDACTED], 2017, application for assistance from a computer in Detroit, Michigan. Exhibit A, p 105.
4. On July 13, 2017, the Department notified Respondent at her [REDACTED], Michigan address that she was eligible for Medical Assistance (MA) effective July 1, 2017. Exhibit A, pp 56-59.
5. On July 13, 2017, the Department notified Respondent at her [REDACTED] Michigan address that she was eligible for Food Assistance Program (FAP) benefits effective July 13, 2017. Exhibit A, pp 60-66.
6. On an application for assistance dated [REDACTED], 2018, Respondent acknowledged the duties and responsibilities of receiving Medical Assistance (MA) and Food Assistance Program (FAP) benefits. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 67-97.
7. Respondent acknowledged under penalties of perjury that her March 19, 2018, 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 78.
8. Respondent used her Michigan Food Assistance Program (FAP) benefits exclusively in New York from March 21, 2018, through March 28, 2018. Exhibit A, p 165.
9. Department records indicate that Respondent filed her March 19, 2018, application for assistance from a computer in [REDACTED], New York. Exhibit A, p 105.
10. On March 20, 2018, the Department notified Respondent at her [REDACTED] Michigan address that she was eligible for Food Assistance Program (FAP) benefits effective March 1, 2018. Exhibit A, pp 98-104.
11. Respondent applied for Medicaid from the state of New York on April 19, 2018. Exhibit A, pp 113-128.
12. On April 20, 2018, the state of New York notified Respondent that she was eligible for Medicaid benefits in New York. Exhibit A, p 117.
13. On April 30, 2018, Respondent applied for Medicaid from the state of North Carolina claiming to live in North Carolina. Exhibit A, pp 129-131.
14. On May 9, 2018, Respondent signed a form declaring herself to be a resident of North Carolina. Exhibit A, p 137.

15. On May 14, 2018, the state of North Carolina notified Respondent that she was eligible for North Carolina Medicaid benefits as of February 1, 2018. Exhibit A, pp 132-135.
16. Respondent used her Michigan Food Assistance Program (FAP) benefits exclusively in North Carolina from May 12, 2018, through October 25, 2018. Exhibit A, pp 165-167.
17. Department records indicate that from June 13, 2018, through September 5, 2018, Respondent accessed her Michigan benefits account 12 times from computers in North Carolina. Exhibit A, p 112.
18. On an application for assistance dated June 14, 2018, Respondent acknowledged the duties and responsibilities of receiving Medical Assistance (MA) and Food Assistance Program (FAP) benefits. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 106-111.
19. Department records indicate that Respondent filed her June 14, 2018, application for assistance from a computer in [REDACTED], North Carolina. Exhibit A, p 112.
20. Respondent failed to report employment in North Carolina or that she received earned income from employment from August 23, 2018, through November 29, 2018. Exhibit A, pp 162-164.
21. On August 23, 2018, Respondent received Medicaid covered medical services and transportation from the state of North Carolina. Exhibit A, p 138.
22. On November 28, 2018, Respondent gave birth to a child and reported a North Carolina residence on the birth records. Exhibit A, pp 139-140.
23. On November 26, 2018, Respondent entered into a residential lease for a North Carolina residence. Exhibit A, pp 141-161.
24. Respondent received Michigan Medical Assistance (MA) with a value of \$2,591.10 from April 1, 2018, through September 30, 2018. Exhibit A, pp 170-172.
25. Respondent received Michigan Food Assistance Program (FAP) benefits totaling \$876 from May 1, 2018, through September 30, 2018. Exhibit A, p 169.
26. On October 30, 2019, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$3,467.10 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 7-11.

27. The Department's OIG filed a hearing request on October 30, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.

28. This was Respondent's first established IPV.

29. 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 1396-1396w-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.

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-.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.

To be eligible for FAP benefits, a person must be a Michigan resident. A person is considered a resident under the FAP 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. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (January 1, 2020), pp 1-2. The Department is prohibited from imposing any durational residency requirements on the eligibility for FAP benefits. 7 CFR 273.3(a).

State agencies must adopt uniform standards to facilitate interoperability and portability nationwide. The term “interoperability” means the EBT system must enable benefits issued in the form of an EBT card to be redeemed in any state. 7 CFR 274.8(b)(10).

To be eligible for MA benefits, a person must be a Michigan resident. A Michigan resident is an individual who is living in Michigan except for a temporary absence. 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. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (January 1, 2020), pp 1-2. A resident of Michigan is a person who is living in this state voluntarily with the intention of making his or her home in this state and not for a temporary purpose and who is not receiving assistance from another state. MCL 400.31.

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.

On an application for assistance filed from a computer in ██████, Michigan, dated ██████, 2017, Respondent acknowledged the duties and responsibilities of receiving FAP and MA benefits, including the duty to report a change of residency. Respondent did

not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. On July 13, 2017, the Department notified Respondent at her River Rouge, Michigan address that she was eligible for MA and FAP benefits.

On another application for assistance dated [REDACTED], 2018, Respondent again acknowledged the duties and responsibilities of receiving FAP and MA benefits. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent acknowledged under penalties of perjury that her [REDACTED], 2018, application form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Respondent reported to the Department on her [REDACTED], 2018, application form that she was living in [REDACTED], Michigan. On March 20, 2018, the Department notified Respondent at her River Rough, Michigan address that she was eligible for FAP benefits effective March 1, 2018.

Respondent began using her Michigan FAP benefits in [REDACTED], New York on March 21, 2018, and used them exclusively in Flushing, New York through March 28, 2018. Respondent had filed her March 19, 2018, application for assistance from a computer in Flushing, New York. On [REDACTED], 2018, Respondent applied for Medicaid from the state of New York. On April 20, 2018, the state of New York notified Respondent that she was eligible for Medicaid in New York.

On [REDACTED], 2018, Respondent applied for Medicaid from the state of North Carolina claiming to live in North Carolina. On May 9, 2018, Respondent signed a form declaring herself to be a resident of North Carolina. On May 14, 2018, the state of North Carolina notified Respondent that she was eligible for North Carolina Medicaid benefits.

Respondent used her Michigan FAP benefits exclusively in North Carolina from May 12, 2018, through October 25, 2018. Respondent accessed her Michigan MA and FAP benefits records from computers in North Carolina from June 13, 2018, on 12 occasions.

On an application for assistance dated June 14, 2018, Respondent acknowledged the duties and responsibilities of receiving MA and FAP benefits, including the duty to report her residency. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

The June 14, 2018, Michigan application for assistance was filed from a computer in [REDACTED], North Carolina. Respondent failed to report that while in North Carolina, she was employed and received earned income from August 12, 2018, through November 29, 2018. On August 23, 2018, Respondent received Medicaid covered medical services and transportation from the state of North Carolina. On November 28, 2018, Respondent gave birth to a child and reported a North Carolina residence on the birth records. On November 26, 2018, Respondent entered into a residential lease for a North Carolina residence.

Respondent received Michigan MA benefits with a value of \$2,591.10 from April 1, 2018, through September 30, 2018, after filing an application for Michigan MA benefits from a computer in North Carolina. On April 30, 2018, Respondent applied for Medicaid benefits from the state of North Carolina and was approved for those benefits effective February 1, 2018. Respondent remained eligible for North Carolina Medicaid benefits and received North Carolina Medicaid covered medical services and transportation on August 23, 2018. Respondent was not eligible for her Michigan MA benefits while concurrently receiving North Carolina Medicaid services. Therefore, Respondent received a \$2,591.10 overissuance of Michigan MA benefits.

Respondent received Michigan FAP benefits totaling \$876 from May 1, 2018, through September 30, 2018. Respondent was not eligible for any Michigan FAP benefits while she was not living in Michigan. The evidence supports a finding that Respondent was not living in Michigan during that period because on April 30, 2018, she had applied for North Carolina Medicaid reporting that she lived in North Carolina, and declared herself a North Carolina resident on May 9, 2018, and used her Michigan FAP benefits exclusively in North Carolina from May 12, 2018, through October 25, 2018. Since Respondent was not eligible for any Michigan FAP benefits while not living in Michigan, she received a \$876 overissuance of FAP benefits.

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 the reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits the understanding or ability to fulfill reporting responsibilities.

BAM 700, p 7, 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).

The Department has the burden of establishing by clear and convincing evidence that 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.*

On July 12, 2017, Respondent acknowledged the duties and responsibilities of receiving FAP and MA benefits including the duty to report a change 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.

Respondent again acknowledged her duties and responsibilities on another application for assistance dated March 19, 2018. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent acknowledged under penalties of perjury that her March 19, 2018, application form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Respondent reported on her March 19, 2018, application for assistance that she was living in Michigan, and on March 20, 2018, the Department notified her at her Michigan address that she was eligible for FAP benefits.

The evidence supports a finding that Respondent was in New York when she applied for Michigan FAP and MA benefits, and she was in New York from March 21, 2018, through March 28, 2018. While in New York, she applied for New York Medicaid.

Respondent then moved to North Carolina, and the evidence supports a finding that her move to North Carolina was not temporary. On April 30, 2018, Respondent applied for Medicaid from the state of North Carolina. On May 9, 2018, Respondent signed a form declaring herself to be a resident of North Carolina. On May 14, 2018, the state of North Carolina notified Respondent that she was eligible for North Carolina Medicaid benefits as of February 1, 2018. Respondent remained a recipient of North Carolina Medicaid and received North Carolina Medicaid covered services on August 23, 2018.

As a result of Respondent's failure to report her North Carolina residency and that she was receiving North Carolina Medicaid concurrently with her Michigan MA benefits, Respondent received an overissuance of Michigan MA benefits.

The evidence supports a finding that Respondent was no longer a Michigan resident and was not living in Michigan as of May 1, 2018, because she signed a form declaring herself to be a North Carolina resident, was receiving North Carolina Medicaid, and was using her Michigan FAP benefits exclusively in North Carolina. Respondent was not eligible for Michigan FAP benefits while living in North Carolina and declaring herself to be a North Carolina resident. In addition to using her Michigan FAP benefits in North

Carolina, she accessed her Department records from a computer in North Carolina 12 times from computers in North Carolina from June 13, 2018, through September 5, 2018.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report that she was living in North Carolina, had declared herself to be a North Carolina resident, and intentionally applied for North Carolina Medicaid received concurrently with her Michigan MA benefits, for the purposes of maintaining eligibility for Michigan MA and FAP benefits that she would not have been eligible for otherwise.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. A disqualified recipient remains a member of an active group as long as the disqualified person lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

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. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (January 1, 2018), p. 2. 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, p. 16.

The record evidence indicates that this is Respondent's first established IPV violation.

The Department has established an Intentional Program Violation (IPV).

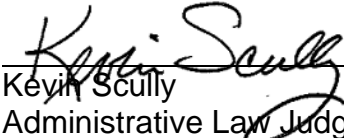
DECISION AND ORDER

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.
2. Respondent did receive an OI of Food Assistance Program (FAP) benefits in the amount of \$876.
3. Respondent did receive an OI of Medical Assistance (MA) benefits in the amount of \$2,591.10.

4. The Department is ORDERED to initiate recoupment procedures for the amount of \$3,467.10 in accordance with Department policy.
5. It is FURTHER ORDERED that Respondent be disqualified from the Food Assistance Program (FAP) for a period of 12 months.

KS/nr



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

Jeanette Cowens
2524 Clark Street
Detroit, MI
48209

Wayne 41 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]
[REDACTED], NC