



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
AL [REDACTED]

Date Mailed: October 30, 2020
MOAHR Docket No.: 20-002156
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

The Michigan Department of Health and Human Services (MDHHS or the Department) requested a hearing alleging that Respondent [REDACTED] committed an intentional program violation (IPV). Pursuant to MDHHS' 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 September 22, 2020.

Brent Brown, Regulation Agent of the Office of Inspector General (OIG), represented MDHHS.

Respondent did not appear at the hearing, and it was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4); Mich Admin Code, R 400.3130(5); or Mich Admin Code, R 400.3178(5).

Department Exhibit A.67 was offered and admitted into evidence.

ISSUES

1. Did MDHHS establish, by clear and convincing evidence, that Respondent committed an IPV concerning FAP benefits?
2. Should Respondent be disqualified from receiving benefits for one year?
3. Did Respondent receive an overissuance (OI) of MA and FAP benefits that MDHHS is entitled to recoup and/or collect as a recipient claim?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. From July 1, 2018, to October 31, 2018, Respondent received \$1,589.00 in FAP benefits and MDHHS paid \$1,651.61 towards Respondent's group's MA coverage.
2. On [REDACTED] 2018, Respondent signed a DHHS-1171 Assistance Application acknowledging her rights and responsibilities for reporting changes in residency as required.
3. Respondent was aware of the responsibility to report out of state employment and representing to out of state employer that she resided in the state of Georgia.
4. Respondent does not have an apparent physical or mental impairment that would limit the understanding or ability to accurately report a change in residency or earned income.
5. Respondent has had zero prior IPV disqualifications.
6. On March 27, 2020, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to report a change in address, and presumptive residency evidenced by employment at [REDACTED] from March 14, 2018 to September 21, 2018, providing her address as [REDACTED] Georgia. Respondent began employment with [REDACTED] on September 26, 2018, providing her address as [REDACTED] Alabama. Electronic verifications of Respondent's EBT card show cashing in of the benefits from Michigan in the states of Georgia and Alabama from June 17, 2018 to October 28, 2018.
7. OIG evidence shows that Respondent committed a FAP IPV from July 1, 2018, to October 31, 2018, and ineligibly received \$1,589.00 in FAP benefits. OIG evidence shows that Respondent ineligibly received \$1,651.61 in MA benefits for the same fraud period.
8. 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

MDHHS policies are contained in the MDHHS 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. MDHHS 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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396 to 42 USC 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 to 42 CFR 430.25. MDHHS administers the MA program pursuant to 42 CFR 435, MCL 400.10 and MCL 400.103 to MCL 400.112k of the Social Welfare Act, MCL 400.1 *et seq.*

Intentional Program Violation

An IPV occurs when a recipient of MDHHS benefits intentionally made a false or misleading statement, or misrepresented, concealed, or withheld facts. 7 CFR 273.16(c)(1). Effective October 1, 2014, MDHHS'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.

To establish an IPV, MDHHS 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, MDHHS 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 understand or fulfill these reporting responsibilities. BAM 720.

In this case, evidence shows that Respondent was aware of her reporting responsibilities pursuant to an acknowledgment of an Application for Assistance (DHHS-1171) signed on [REDACTED] 2018. Evidence further shows that Respondent failed to report earned income received from two employers in the states of Georgia and Alabama, and with both employers, Respondent held herself out as a resident of those states. Further, Respondent cashed in FAP EBT benefits out of state and was the beneficiary of the State of Michigan's MA payments of \$1,651.61 on her behalf while Respondent was represented, was employed, and held herself out to be a resident of the states of Georgia and Alabama.

Therefore, MDHHS has presented clear and convincing evidence that Respondent committed an IPV of the FAP and MA programs.

IPV Disqualification

An individual who is found pursuant to an IPV disqualification hearing to have committed a FAP IPV is disqualified from receiving benefits for the same program for 12 months for the first IPV, 24 months for the second IPV, and lifetime for the third IPV. 7 CFR 273.16(b)(1); BAM 720. As discussed above, MDHHS has established by clear and convincing evidence that Respondent committed an IPV. Because this was Respondent's first IPV for the FAP program, Respondent is subject to a 12-month disqualification from receipt of FAP benefits.

Overissuance

When a client group receives more benefits than entitled to receive, MDHHS must attempt to recoup the OI as a recipient claim. 7 CFR 273.18(a)(2); BAM 700. The amount of an OI is the benefit amount the client actually received minus the amount the client was eligible to receive. 7 CFR 273.18(c)(1); BAM 720, BAM 715, 705.

In this case, MDHHS alleged that Respondent was overissued \$1,651.61 in MA benefits and \$1,589.00 in FAP benefits.

Therefore, MDHHS is entitled to repayment from Respondent in these amounts. benefits.

DECISION AND ORDER

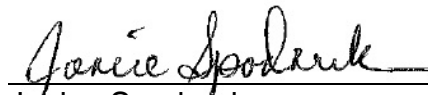
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. MDHHS has established by clear and convincing evidence that Respondent committed an IPV of the MA and FAP program.
2. Respondent is subject to a 12-month disqualification from the FAP program.
3. Respondent received an overissuance of \$1,651.61 in MA benefits and \$1,589.00 in FAP benefits.

IT IS ORDERED that MDHHS initiate recoupment and/or collection procedures in accordance with MDHHS policy for a MA OI in the amount of \$1,651.61 and FAP OI of \$1,589.00, less any amounts already recouped/collected for the fraud period.

IT IS FURTHER ORDERED that Respondent be personally disqualified from the FAP program for a period of 12 months.

JS/ml



Janice Spodarek
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

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

DHHS

Susan Noel
Wayne (District 19) County DHHS – via
electronic mail

MDHHS Recoupment – via electronic mail

L. Bengel – via electronic mail

Respondent

 – via first class mail
 AL