



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: November 2, 2020
MOAHR Docket No.: 20-003141
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on October 27, 2020, from Lansing, Michigan. The Department was represented by Craig Baylis, Regulation Agent of the Office of Inspector General (OIG).

Department's Exhibits 1-2 (pages 1-99) were admitted as evidence.

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) 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 MA?

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 May 15, 2020, 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 MA benefits issued by the Department.
4. Respondent **was** aware of the responsibility to report employment and income.
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 is requesting recoupment of \$58,083.70 due to Respondent's failing to notify DHHS of unreported income, which resulted in Respondent receiving Medicaid benefits that they would otherwise not be eligible. The over-issuance period is from February 2007 through April 2016.
7. The Department's OIG indicates that the time period it is considering the fraud period is February 2007-April 2016 (fraud period).
8. During the fraud period, Respondent was issued \$58,083.70 in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
9. The Department alleges that Respondent received an OI in MA benefits in the amount of \$58,083.70.00.
10. This was Respondent's **first** alleged IPV.
11. 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), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and 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.

Effective January 1, 2016, 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 or more, or
 - the total 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. BAM 720, pp 12-13 (1/1/2016)(Emphasis added).

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The Respondent intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The Respondent was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The Respondent has no apparent physical or mental impairment that limits his or her understanding or ability

to fulfill reporting responsibilities. BAM 700, p 7 (1/1/2016; BAM 720, p 1 (1/1/2016)).

An IPV requires that the Department establish by clear and convincing evidence that the Respondent has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720; see also 7 CFR 273. 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 Respondent who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p 2. Respondents 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. CDC Respondents who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p 1 (4/1/2016). 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 16.

This was Respondent's first instance of an IPV. Therefore, a 12-month disqualification is required.

Overissuance

When a Respondent group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2016).

Clear and convincing proof means that the **evidence** presented by a party during the trial must be highly and substantially more probable to be true than not and the trier of fact must have a firm belief or conviction in its factuality.

This Administrative Law Judge finds that evidence on the record indicates:

Agent Travis Deters, USDA/OIG, contacted MDHHS/OIG to notify the agency that he was investigating Respondent had her husband regarding a Supplemental Nutrition Assistance Program (SNAP) fraud investigation at ██████████ Market. The fraud period in the complaint was from As part of the investigation, Deters was requesting assistance from MDHHS/OIG to identify if Respondent had been receiving benefits and, if so, what documentation they provided for income, assets or other information to determine eligibility. Agent Deters provided several documents that were obtained during his investigation, as well as statements of ownership and other documents, that were not known to MDHHS. Had the information been revealed to MDHHS Respondent would not have been eligible for Medicaid (MA). Respondent did not

receive personal Food Assistance (FAP) during the alleged fraud period. Summary of Respondent's MA benefit payments were provided to Deters and were supposed to be added to the charges against Respondent's husband, however the Assistant United States Attorney (AUSA) failed to request the MA benefits at the time of sentencing.

Respondent is responsible for repayment of \$58,083.70 MA benefits from February 2007 through April 2016.

RESPONDENT'S MEDICAID BENEFIT ISSUANCE

Respondent received MA from February 1, 2007, through April 2016 for the entire group totaling \$58,083.70.

UNREPORTED INCOME/ASSETS

Respondent submitted applications during the fraud period and did indicate regular weekly income from [REDACTED] Market of \$30/wk. for her and her husband, totaling \$600/wk. The USDA/OIG investigation identified that Respondent and her husband had received over \$1.4 million dollars of SNAP benefits, which were not reported as income to MDHHS from February 2007 through April 2016.

Respondent reported the income to MDHHS for herself and her husband as "employees" of [REDACTED] and did not indicate that they owned the business. In a statement to USDA/OIG Agents, [REDACTED], Respondent's husband, stated that he had owned [REDACTED] from 1999 until 2003 or 2004. Due to violations with USDA/FNS he sold the business to another Respondent. In 2006 or 2007, the business was repurchased and put in Respondent's name. The couple ran the business together.

The bill of sale showed that Respondent purchased it on May 15, 2006 for \$20,000.

On June 12, 2006, Respondent submitted a "Request for Review" of her application to accept FAP. In the request she acknowledges that [REDACTED] owned "another business" and could not be part of hers. This business, [REDACTED], is a 'dry meat' market and has been run in conjunction with [REDACTED] Market. This business has never been identified to MDHHS.

BRIDGES DOCUMENTATION

A review of Respondent's Bridges case was conducted to determine when notification of income or assets were reported to MDHHS.

Income Respondent's Employment Summary, attached, identifies [REDACTED] as an employer for both Respondent and [REDACTED] at [REDACTED] MDHHS was

notified on February 1, 2010, for [REDACTED] and July 1, 2011, for Respondent. Applications indicate that both are 'employees'.

On April 27, 2016, there is a Case Note regarding Respondent's redetermination. Caseworker conducted a LARA business search and identified ownership of [REDACTED] Market with Respondent. This was the first time MDHHS became aware of the ownership.

Respondent submitted applications and redeterminations from February 2014 through April 2016 not reporting the ownership or extra income generated from the businesses. There is also no notification of the ownership or employment at Kings of Bastrama.

Employment budes information was added at the end of the OIG evidence

The Department has established by the necessary competent, substantial and material evidence on the record that it was acting in compliance with Department policy when it determined that Respondent failed to notify the Department of income received which resulted in Respondent receiving Medical Assistance benefits for which they would not otherwise be eligible; and when it determined that Respondent committed and 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.
2. Respondent did receive an OI of MA benefits in the amount of \$58,083.70.

The Department is ORDERED to initiate recoupment procedures for the amount of \$58,083.70 in accordance with Department policy.

LL/hb



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
PO Box 30062
Lansing, MI
48909-7562

DHHS

Wayne County (District 17), DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Respondent

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