



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: December 28, 2020
MOAHR Docket No.: 20-004881
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [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 December 8, 2020. The Department was represented by Daniel Marchetti, 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 Food Assistance Program (FAP) and Medical Assistance (MA) benefits that the Department is entitled to recoup?
2. Did the Department establish by clear and convincing evidence that the 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] 2018, Respondent acknowledged her duties and responsibilities including the duty to report changes 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. Exhibit A, pp 12-19.

2. Respondent reported on her [REDACTED] 2018, application for assistance that she was living in Michigan and had not received food assistance from another state in the last 30 days. Exhibit A, pp 12 and 16.
3. The Respondent received Food Assistance Program (FAP) benefits totaling [REDACTED] from November 1, 2018, through March 31, 2019. Exhibit A, p 40.
4. Respondent used her Michigan Food Assistance Program (FAP) benefits to make purchases in Michigan from November 6, 2018, through April 22, 2019. Exhibit A, pp 28-29.
5. The Respondent received Medical Assistance (MA) with a value of [REDACTED] from November 1, 2018, through May 31, 2019. Exhibit A, pp 41-49.
6. On August 19, 2019, the state of Ohio notified Respondent that she was no longer eligible for medical assistance in Ohio because she was not a resident of Ohio. Exhibit A, pp 26-27.
7. On October 3, 2018, Respondent filed an application for food and medical assistance with the state of Ohio. Exhibit A, p 22-23.
8. Respondent received food assistance from the state of Ohio from October 1, 2018, through March 31, 2019. Exhibit A, p 24.
9. Respondent received medical assistance from October 1, 2018, through September 30, 2019. Exhibit A, pp 22-23.
10. The Department's OIG filed a hearing request on [REDACTED] [REDACTED] [REDACTED] to establish that Respondent committed an Intentional Program Violation (IPV). Exhibit A, p 3.
11. On June 29, 2020, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$4,739.82 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 7-8 and 53-55.
12. This was Respondent's first established IPV.
13. 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 through 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 through 42 CFR 420.25. The Department administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.103 through MCL 400.112k of the Social Welfare Act, MCL 400.1 *et seq.*

The Food Assistance Program (FAP) is funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 through 7 USC 2036a. It is implemented by the federal regulations contained in 7 CFR 273. The Department administers FAP pursuant to MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq.*, and Mich Admin Code, R 400.3001 through 400.3011.

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.

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.

An individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple SNAP benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years. 7 CFR 273(b)(5).

The Department may not deny or terminate a resident's Medicaid eligibility because of that person's temporary absence from the State if the person intends to return when the purpose of the absence has been accomplished, unless another State has determined that the person is a resident there for purposes of Medicaid. 42 CFR 435.403(j).

On an application for assistance dated November 1, 2018, Respondent acknowledged her duties and responsibilities including the duty to report changes 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 falsely reported on her November 1, 2018, application for assistance that she had not received food assistance from another state in the previous 30 days. Respondent had been receiving both food and medical assistance from the state of Ohio since October 3, 2018. Respondent's medical assistance in Ohio had been previously closed because she was not a resident of Ohio.

Respondent received Michigan FAP benefits totaling \$2,262 from November 1, 2018, through March 31, 2018, and Michigan MA benefits with a value of \$2,477.82 from November 1, 2018, through May 31, 2019. All of these benefits were received concurrently with the food and medical assistance she was receiving from the state of Ohio. If Respondent had reported to Department that she was already receiving food and medical assistance from the state of Ohio, then she would not have been eligible for any of the Michigan FAP and MA benefits that she received. Therefore, Respondent received a \$4,739.82 overissuance of Michigan FAP and MA benefits.

Intentional Program Violation

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; see also 7 CFR 273.16(e)(6).

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

Respondent acknowledged the duties and responsibilities of receiving FAP and MA benefits on an application for assistance dated November 1, 2018, including the duty to disclose the receipt of duplicate 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.

The evidence supports a finding that Respondent truthfully reported to the Department that she was living in Michigan when she filed her application for assistance, but failed to report that she was receiving duplicate food and Medical assistance from the state of Ohio. As a result of Respondent's failure to truthfully report her circumstances to the Department, she received Michigan FAP and MA benefits that she was not eligible for.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that the Respondent intentionally failed to report to the Department that she was receiving duplicate food and medical assistance from Ohio concurrently with her Michigan FAP and MA benefits for the purposes of becoming eligible for 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 Department has established an Intentional Program Violation (IPV).

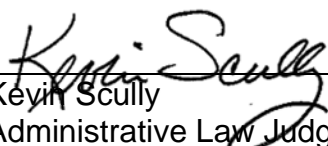
A twelve-month disqualification from the Food Assistance Program (FAP) is appropriate in this case because although Respondent did receive concurrent food assistance, she did not make a fraudulent statement or representation with respect to identity or place of residence. 7 CFR 273(b)(5). Respondent intentionally failed to report information to Michigan resulting in an overissuance of Michigan benefits, but truthfully reported that she was Michigan resident living in Michigan when she filed her application for assistance in Michigan on November 1, 2018.

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 Food Assistance Program (FAP) benefits in the amount of [REDACTED].
3. Respondent did receive an OI of Medical Assistance (MA) benefits in the amount of [REDACTED].
4. The Department is ORDERED to initiate recoupment procedures for the amount of \$4,739.82 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

Petitioner

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

Wayne 57 County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

DHHS

Richard Latimore
4733 Conner
Detroit, MI
48215

Respondent

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