

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

Registration No: 201340857
REHD/RECON
Issue No: 3055
Case No: [REDACTED]
Hearing Date: July 3, 2013
Clare County DHS

Administrative Law Judge: Suzanne D. Sonneborn

DECISION AFTER REHEARING

This matter is before the undersigned Administrative Law Judge in accordance with MCL 400.9, MCL 400.37, Mich Admin Code Rule 400.909, and 7 CFR 273.16, and pursuant to an Order Granting Request for Rehearing and Vacating Hearing Decision and Order issued by the assigned Administrative Law Judge (ALJ) at the conclusion of a hearing conducted on February 7, 2013 and mailed on February 19, 2013 in the above-captioned matter. After due notice provided via a Notice of Disqualification Hearing mailed on June 3, 2013, a telephone hearing was held on July 3, 2013 from Lansing, Michigan. At Respondent's request, Respondent appeared via three-way conference call. The Department of Human Services (Department) was represented by [REDACTED], a regulation agent with the department's Office of Inspector General (OIG).

PROCEDURAL HISTORY

1. On October 9, 2012, the Michigan Administrative Hearing System received the Department's October 4, 2012 request for hearing to establish an over issuance of FAP benefits received as a result of a determination that Respondent committed an IPV. The OIG further requested that Respondent be disqualified from receiving further FAP benefits for a period of ten years.
2. The disqualification hearing was scheduled for November 29, 2012 at 8:30 a.m. pursuant to a Notice of Disqualification Hearing mailed to Respondent on October 26, 2012, along with an enclosed Hearing Summary packet which included the evidence that would be used to establish whether Respondent committed an IPV.
3. Pursuant to Respondent's November 23, 2012 request, the disqualification hearing was to have been conducted via three-way conference call at the offices of Florida attorney [REDACTED], whom Respondent indicated was his attorney and was authorized by Respondent to represent him in this matter.

4. On November 29, 2012 at 8:30 a.m., this Administrative Law Judge and the Department initiated contact with Mr. ██████ to proceed with the scheduled disqualification hearing via three-way conference call. At that time, Mr. ██████ advised that Respondent was not present for the hearing. Mr. ██████ further advised that he is neither Respondent's attorney nor his authorized representative, nor had Mr. ██████ submitted any written appearance indicating that he is acting as Respondent's authorized representative in this matter. Mr. ██████ further requested that this Administrative Law Judge adjourn and reschedule the November 29, 2012 disqualification hearing in order to give Mr. ██████ an opportunity to locate Respondent. Because this request was unopposed by the Department, this Administrative Law Judge agreed to allow Respondent to submit in writing his request for an adjournment by the close of business on November 29, 2012, which Respondent subsequently did.
5. In his November 29, 2012 request to adjourn the November 29, 2012 disqualification hearing, Respondent indicated in relevant part that he suffers from an attention deficit hyperactivity disorder which prevents him from participating in a hearing wherein he is unable to read the questions before answering. Respondent therefore requested that he be provided with written questions in order that he may understand, follow and respond to the questions being asked at the hearing.
6. On November 30, 2012, this Administrative Law Judge issued an Order Granting Adjournment Request, ordering that Respondent's disqualification hearing be rescheduled at a date and time to be set. In doing so, this Administrative Law Judge also ordered that in lieu of questioning Respondent at the rescheduled disqualification hearing regarding the evidence submitted by the Office of Inspector General in support of the alleged intentional program violation, a copy of which evidence was previously provided to Respondent with the Notice of Disqualification Hearing mailed October 26, 2012, this Administrative Law Judge would accept Respondent's sworn statement of explanation in response to such evidence, provided Respondent's sworn statement was received by this Administrative Law Judge in advance of the rescheduled disqualification hearing.
7. The disqualification hearing was subsequently rescheduled for February 7, 2013 at 10:00 a.m. pursuant to a Notice of Disqualification Hearing mailed to Respondent on January 4, 2013. The Notice advised Respondent that he has the right to see the evidence that an intentional program violation may have been committed and he may make an appointment at his local DHS office to do so. The Notice also included the following instruction regarding Exhibits: "If you or your witnesses have documents or written materials which you want the Administrative Law Judge to consider in this hearing, send them immediately to Administrative Hearings."
8. On January 16, 2013, Respondent submitted a written request that the February 7, 2013 in-person disqualification hearing instead be conducted via

three-way conference call at the offices of Florida attorney [REDACTED], whom Respondent indicated was his attorney and was authorized by Respondent to represent him in this matter. Respondent further requested that his "severe adult ADHD learning disability" be accommodated at the telephone hearing through the provision of Computer Assisted Real-Time Captioning.

9. On January 22, 2013, this Administrative Law Judge issued an Order Granting Respondent's Request for Telephone Hearing and Denying Respondent's Request for Computer Assisted Real-Time Captioning. In doing so, this Administrative Law Judge held that the Michigan Administrative Hearing System lacked the capability of providing Computer Assisted Real-Time Captioning.
10. On February 5, 2013, Florida attorney [REDACTED] filed a Notice of Appearance, indicating he would appear and assist Respondent at the February 7, 2013 hearing as his "ADA assistant, interpreter, and counselor."
11. At the request of [REDACTED], on February 6, 2013 at 8:21 a.m., this office provided Mr. [REDACTED] with an additional facsimiled copy of the Hearing Summary and the 41 pages of evidence that would be used to establish whether Respondent committed an IPV.
12. On February 7, 2013, this Administrative Law Judge held a telephone hearing in this matter, at which Respondent appeared and provided testimony. Respondent's appearance was via three-way conference call from the offices of Respondent's attorney, [REDACTED] [REDACTED], who was permitted by this Administrative Law Judge to appear on Respondent's behalf as his "ADA assistant and interpreter" but not in his capacity as Respondent's attorney inasmuch as Mr. [REDACTED] is not licensed to practice law in Michigan. The Department was represented by [REDACTED], a regulation agent with the department's Office of Inspector General (OIG).
13. On February 19, 2013, this ALJ issued a Hearing Decision, holding that Respondent committed an intentional program violation involving the Food Assistance Program (FAP) by refusing or failing to report a change in state residency, and ordering that Respondent reimburse the Department for the FAP benefits ineligibly received as a result of his intentional program violation in the amount of \$2,000.00. Having further concluded that Respondent had received concurrent benefits from the states of Florida and Michigan, this ALJ ordered that Respondent be personally disqualified from participation in the FAP for ten years.
14. On April 5, 2013, this office received Respondent's Motion for Rehearing and/or Reconsideration and Other Relief, dated April 3, 2013 and submitted in Respondent's capacity as "Petitioner pro se," indicating therein that he requested such relief because he was not aware of the nature and cause of the charges and evidence against him prior to the February 7, 2013 hearing and because he has since obtained newly discovered evidence refuting the alleged intentional

program violation. Respondent further requested a copy of the audio recording of the February 7, 2013 hearing.

15. On April, 19, 2013, Supervising Administrative Law Judge Kathleen H. Svoboda issued an Order Granting Request for Rehearing and Vacating Hearing Decision and Order. In doing so, ALJ Svoboda indicated that a rehearing was appropriate because the audio recording for the February 7, 2013 hearing was corrupted, rendering it impossible to retrieve and provide to Respondent. Accordingly, ALJ Svoboda held that the rehearing would not be a *de novo* hearing but, rather, a rehearing of the issue for which the Department requested the disqualification hearing conducted on February 7, 2013. ALJ Svoboda further held that new evidence would not be accepted unless it was newly discovered evidence that existed at the time of the hearing as directed by the Administrative Procedures Act, the Michigan Administrative Code and Bridges policy. The evidence considered would be the evidence that was available and submitted at the February 7, 2013 hearing.
16. On June 3, 2013, a Notice of Disqualification Hearing was mailed to Respondent, scheduling the rehearing for July 3, 2013 at 10:30 a.m. from Lansing, Michigan. The Notice advised Respondent that he has the right to see the evidence that an intentional program violation may have been committed and he may make an appointment at his local DHS office to do so. The Notice also included the following instruction regarding Exhibits: "If you or your witnesses have documents or written materials which you want the Administrative Law Judge to consider in this hearing, send them immediately to Administrative Hearings."
17. On June 17, 2013, this office received Respondent's Motion to Reschedule July 3, 2013 Rehearing, dated June 11, 2013 and submitted in Respondent's capacity as "Petitioner pro se," indicating therein that he requires auxiliary aids to accommodate his disability, he is unable to travel to Michigan for the rehearing, and he has a family reunion during the week of July 3, 2013.
18. On June 17, 2013, this office also received Respondent's Motion for ADA Accommodations of Recorded Telephone Hearing, Assistance by Edward Galante, and Computer Assisted Real-Time Captioning for Rehearing, dated June 11, 2013 and submitted in Respondent's capacity as "Petitioner pro se," indicating therein that he has a learning disability which can adversely affect his attention, focus, memory, concentration, organization, and impulsivity. In support thereof, Respondent requested a telephone hearing with CART auxiliary aids and services and the assistance of Florida attorney Edward Galante as his "authorized ADA assistant, interpreter, and counselor."
19. On June 17, 2013, this office also received Respondent's Index List of Document Exhibits in Supplemental Affidavit of [REDACTED] in Support of his Motion for Rehearing/Reconsideration, undated and signed by Florida attorney [REDACTED]. In addition, Mr. [REDACTED] submitted a CD containing a digital

scan of the 70 exhibits referenced in the Index List, comprising 634 pages, which he indicated he intended to introduce at the rehearing. Neither Respondent nor Mr. ██████ served a copy of Respondent's Index List of Document Exhibits in Supplemental Affidavit of ██████ in Support of his Motion for Rehearing/Reconsideration, or a hard copy of the 70 Exhibits, on the Department's Office of Inspector General or the Department's Clare County office.

20. On June 17, 2013, this office also received correspondence from ██████, indicating that he would represent Respondent at the hearing assuming it is a telephone hearing and could be rescheduled from its current date of July 3, 2013.
21. In correspondence to ██████ dated June 18, 2013, with copy provided to Respondent and to the Department's Clare County office, Supervising Administrative Law Judge Kathleen H. Svoboda advised that Respondent's request for a telephone hearing was granted; however, Respondent's motion to reschedule the July 3, 2013 hearing was denied as no good cause had been provided, and Respondent was instructed to provide a number at which he could be reached for the telephone hearing. Supervising ALJ Svoboda further advised that Respondent's motion for ADA accommodation had been denied absent medical proof that Respondent could not participate in the hearing and because MAHS lacks the capability to provide the extensive accommodation requested. Supervising ALJ Svoboda further advised that, because the July 3, 2013 rehearing was due to a corrupted recording, it is to mirror, as closely as possible, the original hearing and the evidence to be considered will be the evidence that was available and submitted at the time of the February 7, 2013 hearing. Supervising ALJ Svoboda further advised that MAHS did not accept CDs of exhibits from any party and hard copies of all exhibits must therefore be provided prior to the hearing by regular or certified mail or special/overnight delivery service. Finally, Supervising ALJ Svoboda advised that Mr. ██████ lacked authorization to represent Respondent as he has not filed a formal appearance evidencing his license to practice law in Michigan or permission from the state of Michigan to practice *pro hac vice*.
22. On June 25, 2013, this office received correspondence from ██████, indicating that if the state of Michigan required Mr. ██████ to file a formal appearance evidencing his license to practice law in Michigan or permission from the state of Michigan to practice *pro hac vice*, Mr. ██████ could not obtain the *pro hac vice* admission prior to the July 3, 2013 rehearing and would not be able to assist Respondent at the rehearing. Mr. ██████ also asserted that Respondent should be permitted to introduce the 70 exhibits he recently provided on CD because it was only after the February 7, 2013 hearing that Respondent understood the nature of the charges against him and was thereafter able to find documents to dispute the charges. Mr. ██████ also reiterated Respondent's need for computer-assisted real-time captioning at the rehearing to

accommodate Respondent's difficulty understanding and focusing on verbal exchanges. Neither Respondent nor Mr. [REDACTED] served a copy of this correspondence on the Department's Office of Inspector General or the Department's Clare County office.

23. On July 1, 2013, this office received Respondent's Motion to Authorize [REDACTED] as Respondent's ADA Assistant, Interpreter, and Counselor, dated June 27, 2013 and submitted in Respondent's capacity as "Petitioner pro se," wherein Respondent requests that his attorney, [REDACTED], be authorized to represent Respondent as his ADA assistant, interpreter, and counsel in this hearing process.
24. On July 1, 2013, this office also received Respondent's Motion to Reconsider Postponing July 3, 2013 Rehearing, dated June 27, 2013 and submitted in Respondent's capacity as "Petitioner pro se," wherein Respondent requests that the July 3, 2013 rehearing be rescheduled because his attorney, [REDACTED], is not available to assist him, because he still does not understand the nature of the alleged intentional program violation charges against him, because he will be unable to effectively participate in the rehearing without a computer-assisted real-time captioning accommodation and because he is hosting his family's reunion during the week of July 3, 2013.
25. On July 1, 2013, this office also received Respondent's Petition for Rule to Show Just Cause for IPV Charge and/or Rehearing as Constitutional, dated June 27, 2013 and submitted in Respondent's capacity as "Petitioner pro se," wherein Respondent asserts that the rehearing scheduled for July 3, 2013 violates or offends Respondent's federal constitutional due process rights.
26. On July 1, 2013, this office also received Respondent's Motion to Reconsider Postponing July 3, 2013 Rehearing, dated June 27, 2013 and submitted in Respondent's capacity as "Petitioner pro se," wherein Respondent seeks reconsideration of his previously filed Motion to Reschedule July 3, 2013 hearing, which motion was denied by Supervising ALJ Kathleen Svoboda in correspondence dated June 18, 2013 after concluding that no good cause had been shown.
27. On July 1, 2013, this office also received Respondent's Subpoena *Duces Tecum* dated June 27, 2013 and submitted in Respondent's capacity as "Petitioner pro se," wherein Respondent seeks the appearance and testimony of several individuals at the July 3, 2013 rehearing. Alternatively, the Subpoena requests the production of supporting evidence of Respondent's alleged intentional program violation that formed the basis for the February 7, 2013 telephone hearing.
28. On July 1, 2013, this office also received Respondent's Motion to Reconsider Necessary ADA Accommodation Request dated June 27, 2013 and submitted in

Respondent's capacity as "Petitioner pro se," wherein Respondent again requests that this office provide him with the necessary computer assisted real-time captioning auxiliary aid and approve his attorney, [REDACTED], as his ADA assistant, interpreter, and counselor.

29. On July 1, 2013, this office also received Respondent's 56-page Motion to Vacate/Dismiss Charge and/or Rehearing dated June 27, 2013 and submitted in Respondent's capacity as "Petitioner pro se," wherein Respondent requests that the intentional program violation charges against him be dismissed because the Department of Human Services failed to acknowledge facts about Respondent's previously reported: (i) continual travel to Florida and Florida usage of Michigan food stamps; (ii) Florida food stamp assistance beginning in April 2012 and not during November 2011; and (iii) particular ADA handicap and requested ADA accommodation needs.
30. On July 1, 2013, this office also received Respondent's List of Exhibits in Supplemental Affidavit in Support of [REDACTED] Defense and Motion to Vacate/Dismiss Charge and/or Rehearing, dated June 27, 2013 and submitted in Respondent's capacity as "Petitioner pro se," as well as a hard copy of the 70 exhibits comprising 634 pages, which Respondent indicated he intended to introduce at the rehearing. Respondent did not serve a copy of Respondent's List of Exhibits in Supplemental Affidavit in Support of [REDACTED] Defense and Motion to Vacate/Dismiss Charge and/or Rehearing, or a hard copy of the 70 exhibits referenced in the List of Exhibits comprising 634 pages, on the Department's Office of Inspector General or the Department's Clare County office.
31. In correspondence to [REDACTED] facsimiled on July 2, 2013, with copy provided to Respondent and to the Department's Clare County office, this Administrative Law Judge advised that, because his role as Respondent's attorney is inseparable from his role as Respondent's ADA assistant and interpreter, as evidenced at the February 7, 2013 hearing, during which he made multiple legal arguments on Respondent's behalf, Mr. [REDACTED] was without legal authority to represent Mr. [REDACTED] at the July 3, 2013 hearing absent his formal appearance evidencing his license to practice law in the State of Michigan or permission from the State of Michigan to practice *pro hac vice*. This ALJ further advised Mr. [REDACTED] that, as indicated in the June 18, 2013 correspondence from Supervising ALJ Kathleen Svoboda, wherein she denied Respondent's previously filed Motion to Reschedule July 3, 2013 Rehearing, the July 3, 2013 telephone rehearing would proceed as scheduled, at the outset of which any remaining outstanding motions filed by Respondent would be addressed. This ALJ further instructed Mr. [REDACTED] to have Respondent provide a telephone number where he can be reached on the date and time of the rehearing.
32. On July 2, 2013, Respondent contacted this office and requested that he be contacted at the law office of [REDACTED] for the July 3, 2013 rehearing.

33. At the outset of the July 3, 2013 rehearing, this ALJ ruled on the record that Respondent's Petition for Rule to Show Just Cause for IPV Charge and/or Rehearing as Constitutional was denied for the following reasons:
- Respondent's Petition is unsupported by law or policy. Department is not required to show just cause but rather has the burden of establishing 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 (2013) 720.
 - Respondent's assertion that the rehearing violates or offends Respondent's federal constitutional due process rights is not within the scope of authority delegated to this ALJ pursuant to a written directive signed by the Department of Human Services Director, which states that Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.
 - The rehearing is pursuant to the Order issued April 19, 2013 granting Respondent's Motion for Rehearing/Reconsideration.
34. At the outset of the July 3, 2013 rehearing, this ALJ also ruled on the record that Respondent's Motion to Reconsider Postponing July 3, 2013 Rehearing was denied for the following reasons:
- Respondent's Motion seeks reconsideration of a previously filed Motion to Reschedule July 3, 2013 hearing, which motion was denied by Supervising ALJ Kathleen Svoboda in correspondence dated June 18, 2013 after concluding that no good cause had been shown.
 - Respondent's Motion is untimely as Respondent has been aware of the July 3, 2013 rehearing date since at least June 9, 2013, according to his submittal.
 - Respondent's Motion is without merit. Respondent has been aware since at least June 18, 2013 that it is the position of the MAHS that Florida attorney [REDACTED] is without legal authority to represent Respondent in Michigan without permission from the state to practice in Michigan *pro hac vice*.
35. At the outset of the July 3, 2013 rehearing, this ALJ also ruled on the record that Respondent's Subpoena *Duces Tecum* was denied for the following reasons:
- Respondent's Subpoena is untimely as it was received by MAHS on July 1, 2013 and therefore did not allow adequate time for MAHS to complete the subpoena requirements in accordance with BAM 600.
 - Respondent's subpoena is without merit as it alternatively seeks production of evidence relied upon at the February 7, 2013 hearing, which evidence was

originally provided to Respondent with the Notice of Disqualification Hearing mailed October 26, 2012, and which evidence is contained in Exhibit 33 of Respondent's Exhibit List. A second copy was also provided on February 6, 2013 by facsimile to Respondent and attorney [REDACTED], who served as Respondent's ADA interpreter and assistant at that hearing.

36. At the outset of the July 3, 2013 rehearing, this ALJ also ruled on the record that Respondent's Motion to Reconsider Necessary ADA Accommodation Request was denied for the following reasons:

- MAHS lacks the capability to provide Respondent with Computer Assisted Real-Time Captioning at the hearing.
- Respondent has submitted no recent medical documentation to demonstrate that he lacks the ability to comprehend the basis for the hearing and effectively participate in the hearing.

37. At the outset of the July 3, 2013 rehearing, this ALJ also ruled on the record that Respondent's Motion to Vacate/Dismiss Charge and/or Rehearing was denied for the reason that it is without merit.

38. At the outset of the July 3, 2013 rehearing, this ALJ also ruled on the record that Respondent's Exhibits 1 thru 32 and Exhibits 35 thru 78 as set forth in Respondent's List of Exhibits in Supplemental Affidavit in Support of [REDACTED] Defense and Motion to Vacate/Dismiss Charge and/or Rehearing, which Exhibits consist of 634 pages of documents, were excluded from admission into the rehearing record for the following reasons:

- Respondent failed to serve the Department's Office of Inspector General or the Department's Clare County office with a copy of Respondent's Exhibits in advance of the July 3, 2013 rehearing, thereby depriving the Department's OIG of the opportunity to examine the documents and cross-examine Respondent regarding the documents, contrary to BAM 600 and Section 76 of the Michigan Administrative Procedures Act, MCL 24.276.¹
- Exhibit 1 consists of Respondent's Supplemental Affidavit in Support of [REDACTED] Defense and Motion to Vacate/Dismiss Charge and/or Rehearing and, as such, constitutes a pleading, not documentary evidence.
- Exhibits 2 thru 19 and Exhibits 53 thru 75 consist of documents ranging in date from August 15, 2002 through May 27, 2008, and from July 27, 2006

¹ BAM 600 provides in relevant part that, "[b]oth the local office and the client or authorized hearing representative must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross examine adverse witnesses, and cross-examine the author of a document offered in evidence." BAM 600, p. 27. (Emphasis added).

through January 26, 2012, which documents existed at the time of the original February 7, 2013 hearing but are not newly discovered as they could have been discovered and produced by Respondent at that time using reasonable diligence. BAM 600; see *People v Cress*, 468 Mich 678, 692; 664 NW2d 174 (2003); *People v Terrell*, 289 Mich App 553, 562; 797 NW2d 684 (2010) (“[N]ewly available evidence is not synonymous with newly discovered evidence sufficient to warrant a new trial.”)

- Exhibits 20 thru 32 and Exhibits 36 thru 52 consist of pleadings filed by Respondent in this case, correspondence exchanged between Respondent and the Department’s Office of Inspector General and between Respondent and this office, and Orders and Notices issued by this office and, as such, are not considered documentary evidence.
- Exhibits 35, 76, 77, and 78 consist of documents dated February 11, 2013, February 27, 2013 and March 28, 2013 and, as such, these documents constitute new evidence which did not exist at the time of the original February 7, 2013 hearing but were obtained following that and therefore must be excluded pursuant to BAM 600.

39. At the outset of the July 3, 2013 rehearing, this ALJ also ruled on the record that Respondent’s Exhibits 33 and 34 as set forth in Respondent’s List of Exhibits in Supplemental Affidavit in Support of ██████ Defense and Motion to Vacate/Dismiss Charge and/or Rehearing were admitted into the rehearing record because Exhibits 33 and 34 are duplicative to the evidence that was submitted by the Department’s Office of Inspector General and admitted into evidence at the original February 7, 2013 hearing.

ISSUE

Whether Respondent committed an intentional program violation (IPV) involving the Food Assistance Program (FAP) and whether Respondent received an over issuance of FAP benefits that the Department is entitled to recoup?

FINDINGS OF FACT

Based on the clear and convincing evidence pertaining to the whole record, the Administrative Law Judge finds as material fact:

1. The Department's OIG filed a request for hearing to establish an over issuance of FAP benefits received as a result of a determination that Respondent committed an IPV. The OIG further requested that Respondent be disqualified from receiving further FAP benefits for a period of ten years.

2. On September 11, 2009, Respondent signed an assistance application (DHS-1171) and, in doing so, certified with his signature, under penalty of perjury, that all the information he had written on the form or told his DHS specialist was true. Respondent further certified with his signature that he received a copy, reviewed and agreed with the sections in the assistance application Information Booklet explaining how to apply for and receive help: Programs, Things You Must Do, Important Things to Know, Repay Agreements, Information About Your Household That Will Be Shared, which include the obligation to report changes in one's circumstances within ten days. Respondent further certified with his signature that he understood he could be prosecuted for perjury and for fraud and/or be required to repay the amount wrongfully received if he intentionally gave false or misleading information, misrepresented, hid or withheld facts that may cause him to receive assistance he should not have received. (Department Exhibit 1, pp. 12-25)
3. On August 25, 2010, Respondent signed a mid-certification contact notice (DHS-2240-A) and, in doing so, certified with his signature his understanding of the rules of the FAP program, including but not limited to his obligation not to give false information, or hide information to get or to continue to get food assistance benefits. Respondent further certified with his signature his understanding that he would owe the value of any extra FAP benefits he received if he failed to fully report changes to his household circumstances. (Department Exhibit 2, pp. 26-28)
4. On September 8, 2011, Respondent signed a redetermination (DHS-1010) and, in doing so, Respondent certified with his signature, under penalty of perjury, that the redetermination had been examined by or read to him and, to the best of his knowledge, the facts were true and complete. Respondent further certified with his signature that he received a copy and reviewed the sections in DHS Publication 1010, Important Things About Programs & Services, which include the obligation to report changes in one's circumstances within ten days. Respondent further certified with his signature that all the information he had written on the form or told his DHS specialist was true. Respondent further certified with his signature that he understood he could be prosecuted for perjury and for fraud and/or be required to repay the amount wrongfully received if he intentionally gave false or misleading information, misrepresented, hid or withheld facts that caused him to receive assistance he should not have received. (Department Exhibit 3, pp. 29-32)
5. In his September 8, 2011 redetermination (DHS-1010), Respondent reported no change in his residency and indicated that he continued to reside at [REDACTED], Michigan. Nor did Respondent report his need to use his Michigan Bridge card in Florida, or that his

- Michigan Bridge card had been lost or stolen. (Department Exhibit 3, pp. 29-32)
6. During the period February 6, 2011 through January 3, 2012, Respondent used his Michigan Bridge card exclusively in the state of Florida, with the exception of one usage in Michigan on October 25, 2011. (Department Exhibit 4, pp. 33-35)
 7. As a result of Respondent's refusal or failure to properly report that he was no longer a Michigan resident, he received an over issuance of FAP benefits in the amount of \$2,000.00 during the period March 1, 2011 through December 31, 2011. (Department Exhibit 5, pp. 36-37)
 8. On August 6, 2012, the Department obtained verification that Respondent received concurrent FAP benefits from both the state of Florida and the state of Michigan for the month of November 2011.² (Department Exhibit 6, pp. 38-41)
 9. Respondent was clearly instructed and fully aware, or should have been fully aware, of his responsibility to report all changes in circumstances, including his change of residency, to the Department within ten days of the occurrence, as required by agency policy. (Department Exhibit 1, pp. 12-25; Department Exhibit 2, pp. 26-28; Department Exhibit 3, pp. 29-32)
 10. At the time that Respondent signed an assistance application (DHS-1171), a mid-certification contact notice (DHS-2240-A), and a redetermination (DHS-1010) on September 11, 2009, August 25, 2010, and September 8, 2011, respectively, there was no known apparent physical or mental impairment present that limited Respondent's ability to understand and comply with his reporting responsibilities. (Department Exhibit 1, pp. 12-25; Department Exhibit 2, pp. 26-28; Department Exhibit 3, pp. 29-32)

² While Respondent objected to the admission of Department Exhibit 6 on grounds that it constitutes hearsay and contains testimonial evidence requiring examination of the Florida DHS employee who prepared the document, this Administrative Law Judge has reviewed both the Michigan Rules of Evidence and the Michigan Administrative Procedures Act (MAPA) and finds that Department Exhibit 6 is admissible pursuant to MRE 803(6) Records of Regularly Conducted Activity inasmuch as the OIG, in the course of conducting their business, needs to rely upon the records of the Florida DHS, and those of other states' Human Services departments, to make their determinations. This Administrative Law Judge further finds that it would be an onerous burden to require another state's department employees to be present when their employees have provided that information to the OIG in the regular course of business. Finally, this Administrative Law Judge notes that the admission of Department Exhibit 6 is likewise supported by Section 75 of the MAPA which provides in relevant part that, "[i]n a contested case the rules of evidence as applied in a nonjury civil case in circuit court shall be followed as far as practicable, but an agency may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs." MCL 24.275.

11. During the July 3, 2013 disqualification rehearing, Respondent submitted a six-page written statement which he also read into the record at the rehearing. (Respondent Exhibit A, pp. 1-6)

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The FAP – formerly known as the Food Stamp Program – was established by the Food Stamp Act of 1977, 7 USC 2011, *et seq.*, as amended, and is implemented through federal regulations found in 7 CFR 273.1 *et seq.* The Department administers the FAP under MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015. Agency policies pertaining to the FAP are found in the BAM, Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT). The goal of the FAP is to ensure sound nutrition among children and adults. BEM 230A.

In the present matter, the Department requested a hearing to establish an over issuance of FAP benefits, claiming that the over issuance was a result of an IPV committed by Respondent. Further, the Department asked that Respondent be disqualified from the FAP program for a period of ten years.

To be eligible for FAP benefits, a person must be a Michigan resident. For FAP purposes, a person is considered to be a Michigan resident if he is living in the State, except for vacationing, even if he has no intent to remain in the State permanently or indefinitely. BEM 220, p 1. Generally, a client is responsible for reporting any change in circumstances, including a change in residency, that may affect eligibility or benefit level within ten days of the change. BAM 105, p 7.

When a client or group receives more benefits than they are entitled to receive, the Department must attempt to recoup the over issuance. BAM 700, p 1. A suspected IPV is defined as an over issuance where:

- 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 their reporting responsibilities. [BAM 720, p 1.]

An IPV is suspected by the Department when a client intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing, or preventing a reduction of, program eligibility or benefits. BAM 720, p 1. In bringing an IPV action, the agency carries the burden of establishing the violation with clear and convincing evidence. BAM 720, p 1.

An over issuance period begins the first month the benefit issuance exceeds the amount allowed by Department policy or six years before the date the over issuance was referred to an agency recoupment specialist, whichever is later. This period ends on the month before the benefit is corrected. BAM 720, p 6. The amount of over issuance is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p 6.

Suspected IPV matters are investigated by the OIG. This office: refers suspected IPV cases that meet criteria for prosecution to the appropriate prosecuting attorney; refers suspected IPV cases that meet criteria for IPV administrative hearings to the Michigan Administrative Hearings System (MAHS); and returns non-IPV cases back to the Department's recoupment specialist. BAM 720, p 9.

The Department's OIG will request an IPV hearing when:

- Benefit over issuances are not forwarded to the prosecuting attorney's office;
- Prosecution of the matter is declined by the prosecuting attorney's office for a reason other than lack of evidence, and
- The total OI amount for the FAP is \$1000 or more, or
- The total OI amount is less than \$1000, and
 - The group has a previous IPV, or
 - The alleged IPV involves FAP trafficking, or
 - The alleged fraud involves concurrent receipt of assistance or
 - The alleged fraud is committed by a state/government employee. BAM 720, p 10.

The OIG represents the Department during the hearing process in IPV matters. BAM 720, p 9. When a client is determined to have committed an IPV, the following standard periods of disqualification from the program are applied (unless a court orders a different length of time): one year for the first IPV; two years for the second IPV; and lifetime for the third IPV. BAM 720, p 13. Further, IPV's involving the FAP result in a ten-year disqualification for concurrent receipt of benefits (i.e., receipt of benefits in more than one State at the same time). BAM 720, p 13.

A disqualified client remains a member of an active benefit group, as long as he or she continues to live with the other group members – those members may continue to receive benefits. BAM 720, p 12.

In this case, at the July 3, 2013 disqualification rehearing, [REDACTED], a regulation agent with the Department's OIG, provided credible and sufficient testimony and other evidence establishing that, on September 11, 2009, Respondent signed an assistance application (DHS-1171) and, in doing so, certified with his signature, under penalty of perjury, that all the information he has written on the form or told his DHS specialist was true. Respondent further certified with his signature that he received a copy, reviewed and agreed with the sections in the assistance application Information Booklet explaining how to apply for and receive help: Programs, Things You Must Do, Important Things to Know, Repay Agreements, Information About Your Household That Will Be Shared. Respondent further certified with his signature that he understood he could be prosecuted for perjury and for fraud and/or be required to repay the amount wrongfully received if he intentionally gave false or misleading information, misrepresented, hid or withheld facts that may cause him to receive assistance he should not have received. (Department Exhibit 1, pp. 12-25)

Mr. [REDACTED] further established that on August 25, 2010, Respondent signed a mid-certification contact notice (DHS-2240-A) and, in doing so, certified with his signature his understanding of the rules of the FAP program, including but not limited to his obligation not to give false information, or hide information to get or to continue to get food assistance benefits. Respondent further certified with his signature his understanding that he will owe the value of any extra FAP benefits he receives if he does not fully report changes to his household circumstances. (Department Exhibit 2, pp. 26-28)

Mr. [REDACTED] further established that, on September 8, 2011, Respondent signed a redetermination (DHS-1010) and, in doing so, Respondent reported no change in his residency and indicated that he continued to reside at [REDACTED], Michigan. Nor did Respondent report his need to use his Michigan Bridge card in Florida, or that his Michigan Bridge card had been lost or stolen. (Department Exhibit 3, pp. 29-32) Moreover, in signing the redetermination, Respondent certified with his signature, under penalty of perjury, that the redetermination had been examined by or read to him and, to the best of his knowledge, the facts were true and complete. Respondent further certified with his signature that he received a copy and reviewed the sections in DHS Publication 1010, Important Things About Programs & Services. Respondent further certified with his signature that all the information he has written on the form or told his DHS specialist was true.

Mr. [REDACTED] further established that, during the period February 6, 2011 through January 3, 2012, Respondent used his Michigan Bridge card exclusively in the state of Florida, with the exception of one usage in Michigan on October 25, 2011. (Department Exhibit 4, 33-36) The OIG further established that Respondent received concurrent FAP benefits from the state of Florida and the state of Michigan for the month of

November 2011. (Department Exhibit 6, pp. 38-41) The OIG further established that, as a result of Respondent's refusal or failure to properly report that he was no longer a Michigan resident, he received an over issuance of FAP benefits in the amount of \$2,000.00 during the period March 1, 2011 through December 31, 2011. (Department Exhibit 5, pp. 36-37)

Throughout the course of the OIG's presentation of the Department's case, this Administrative Law Judge took extensive measures to ensure that Respondent was able to read, understand, and follow along with the Department's Hearing Summary and the Exhibits referenced by the OIG, as well as question OIG agent [REDACTED] regarding the OIG's allegations that Respondent committed an intentional program violation involving the FAP program.

In response to the presentation of the Department's case by OIG agent [REDACTED], Respondent testified first by reading from a six-page statement (which was subsequently admitted into the record as Respondent Exhibit A) that he strongly objected to this Administrative Law Judge's ruling that Respondent's Exhibits 1-32 and 36-78 were excluded from admission into the record, asserting that their exclusion denied him constitutional due process and equal protection and put him at a significant disadvantage in presenting his defense. Respondent further testified that, despite having made this Administrative Law Judge aware of his attention deficit disorder, he was unconstitutionally denied the assistance of his Florida attorney, [REDACTED], and the provision of computer-assisted real-time captioning technology at the rehearing to allow him to read as well as hear the testimony in order to properly comprehend it and the charges against him. Respondent further testified that the OIG's attempted recoupment of an alleged over issuance of FAP benefits constitutes a seizure of property in violation of the 4th Amendment to the U.S. Constitution. Respondent further testified that this rehearing is a quasi-criminal hearing and therefore violates the Double Jeopardy Clause of the 6th Amendment to the U.S. Constitution.

In response to questioning by this Administrative Law Judge, Respondent further testified that he did spend time in Florida in 2011, often for more than 30 days at a time, in order to visit his parents, who spend the winters in Florida and return to Michigan in April. Respondent further testified that he could not recall where he was living during the month of March 2011 and questioned the relevance of this issue. Respondent further testified that while he was physically in Michigan during the entire month of April 2011, he could not recall if this was also the case in May 2011. Respondent further testified that despite the amount of time he spent in Florida in 2011, he did not consider himself to have moved to Florida. Respondent further testified that he had reported to his DHS caseworker the fact that he went back and forth between Michigan and Florida in 2011 and that he had been doing so since 2006. Respondent further testified that he was never made aware by the Department of his obligation to report a change in his circumstances and address when he left the state of Michigan for more than 30 days and that he did not intentionally try to defraud the state of Michigan.

Respondent further testified that he did not begin receiving food assistance from the state of Florida until April 2012. Respondent further testified that he first notified the Department in writing in February 2012 that he was permanently moving to Florida and no longer required FAP benefits. Finally, Respondent acknowledged that throughout 2011 and specifically, from at least June 13, 2011 through December 13, 2011, he had requested that his mail be held by the postmaster for the Michigan county in which he claims to have still resided (Clare).

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), *cert den*, 318 US 783 (1943).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Having done so, this Administrative Law Judge finds Respondent's testimony that he resided in Michigan during the months of June 2011 through November 2011 to be unconvincing and unreasonable given that his EBT Bridge Card History Report indicates that Respondent used his Michigan Bridge Card exclusively in Florida from June 14, 2011 through November 30, 2011, except for one instance on October 25, 2011 when Respondent made a purchase in Michigan – and Respondent offered no admissible documentary evidence to contradict this EBT Bridge Card History Report. This Administrative Law Judge further finds Respondent's testimony that he kept his DHS specialist apprised of his extended travel to and from Florida in 2011 to be unconvincing and unreasonable given that no admissible documentation from either Respondent or the OIG was submitted to support that the department was aware of and had approved Claimant's extended out-of-state travel, and given that Claimant's September 8, 2011 redetermination was silent on this issue, despite there having been an opportunity on that form for both Respondent and his DHS specialist to comment on any additional changes.

This Administrative Law Judge further finds Respondent's testimony that he was never made aware by the Department of his obligation to report a change in his circumstances and address when he left the state of Michigan for more than 30 days to be unconvincing and unreasonable given that Respondent certified with his signature in both his September 11, 2009 assistance application and his September 8, 2011 redetermination that he received a copy and reviewed the sections in DHS Publication 1010, Important Things About Programs & Services. This publication clearly advises the applicant of the obligation to report changes in circumstances, including an address change, within 10 days of the change and that the intentional withholding or misrepresentation of information potentially affecting his eligibility or benefit level could

result in criminal, civil, or administrative action.³ This Administrative Law Judge further finds Respondent's testimony that he did not receive food assistance from the state of Florida during the month of November 2011 to be unconvincing and unreasonable in light of the evidence provided by the state of Florida establishing Respondent's approval for food assistance in both November 2011 and April 2012, the latter of which is not disputed by Respondent.

It must also be noted that throughout the original February 7, 2013 hearing as well as the July 3, 2013 rehearing, during which Respondent listened attentively with minimal interruption and with appropriate and relevant questions to this Administrative Law Judge regarding the preliminary rulings, and as underscored by the plethora of arguments set forth in the several motions filed by Respondent in his *pro se* capacity in advance of the rehearing, Respondent has demonstrated a thorough understanding of the nature of the OIG's allegations against him.

Finally, this Administrative Law Judge notes that Respondent's constitutional arguments are not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.⁴

Consequently, based on the testimony and evidence presented by both the OIG and Respondent, this Administrative Law Judge finds that the OIG established, under the clear and convincing standard, that Respondent committed an IPV in this matter, resulting in an over issuance of FAP benefits in the amount of \$2,000.00 during the period March 1, 2011 through December 31, 2011. Further, because the OIG established Respondent's concurrent receipt of benefits (i.e. receipt of benefits in more than one State at the same time), the ten-year disqualification period is appropriate.

³ DHS Publication 1010, Important Things About Programs & Services, may be found at http://www.michigan.gov/documents/dhs/DHS-PUB-1010_243538_7.pdf.

⁴ See also, *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940) (Administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies.)

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge decides that Respondent committed an intentional program violation by refusing or failing to report a change in state residency.

It is therefore ORDERED THAT:

- Respondent shall reimburse the Department for the FAP benefits ineligibly received as a result of his intentional program violation in the amount of \$2,000.00; and
- Respondent is personally disqualified from participation in the FAP for ten years. The disqualification period will begin to run IMMEDIATELY as of the date of this order.

/s/

Suzanne D. Sonneborn
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 24, 2013

Date Mailed: July 24, 2013

NOTICE: The law provides that within 30 days of receipt of this decision, Respondent may appeal this decision to the circuit court for the county in which he lives.

SDS/aca

cc:

