



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: October 17, 2016
MAHS Docket No.: 15-026713
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION AND
OVERISSUANCE**

Upon the request for a hearing by the Michigan Department of Health and Human Services (MDHHS), 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 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 6, 2016, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], regulation agent with the Office of Inspector General. Respondent did not appear.

ISSUES

The first issue is whether MDHHS established Respondent received an overissuance (OI) of benefits.

The second issue is whether MDHHS established that Respondent committed an intentional program violation (IPV).

FINDINGS OF FACT

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

1. Respondent was an ongoing recipient of Food Assistance Program (FAP) benefits from the State of Michigan.
2. As of [REDACTED], Respondent was a resident of the State of [REDACTED]

3. Respondent continued receiving FAP benefits from the State of Michigan from September 2015 through November 2015 totaling [REDACTED].
4. Respondent unintentionally failed to update stopped residency in Michigan to MDHHS.
5. On [REDACTED], MDHHS requested a hearing to establish Respondent committed an IPV, and an OI of [REDACTED] in FAP benefits from September 2015 through November 2015.

CONCLUSIONS OF LAW

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

MDHHS requested a hearing, in part, to establish Respondent received an overissuance of benefits. MDHHS presented an Intentional Program Violation Repayment Agreement (Exhibit 1, pp. 5-6) alleging Respondent received a total of [REDACTED] in over-issued FAP benefits for the months from September 2015 through November 2015. The repayment agreement, along with MDHHS testimony, alleged the OI was based on Respondent's out-of-state residency.

[For FAP benefits,] to be eligible, a person must be a Michigan resident. BEM 220 (July 2014), p. 1. Bridges uses the requirements in the Residence section in this item to determine if a person is a Michigan resident. *Id.*

[For FAP benefits,] a person is considered a resident 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. *Id.* Eligible persons may include... persons who entered the state with a job commitment or to seek employment; and students (for FAP only, this includes students living at home during a school break.) *Id.*

MDHHS policy provides little guidance on when residency Michigan starts or stops. Residency can be inferred based on a client's circumstances.

MDHHS presented Respondent's electronic benefit transfer (EBT) usage history (Exhibit 1, pp. 30-37). The history verified EBT purchases exclusively in Michigan from [REDACTED]. The history verified Respondent's EBT card was used exclusively in [REDACTED] from [REDACTED], through [REDACTED].

MDHHS presented documents from "TheWorkNumber" (Exhibit 1, pp. 38-40). TheWorkNumber is a known internet site that MDHHS can utilize to obtain employment information on behalf of clients. A [REDACTED] mailing address was listed for Respondent. The listed information was noted to be current as of [REDACTED].

An approximate 6 month period (at least) of FAP usage in [REDACTED] is persuasive evidence of non-Michigan residency. It is found Respondent ceased Michigan residency as of [REDACTED]. Accordingly, Respondent was not entitled to receive FAP benefits from the State of Michigan from September 2015 through November 2015.

MDHHS presented Respondent's FAP benefit issuance history from the State of Michigan (Exhibit 1, pp. 41-42). The history listed Respondent received [REDACTED]/month in FAP benefits from September 2015 through November 2015.

MDHHS policy categorizes overissuances into 3 different types: client error, agency error, and intentional fraud (see BAM 700). Client and Agency errors are not pursued if the estimated amount is less than \$250 per program. BAM 700, p. 9.

MDHHS alleged Respondent's failure to update residency was the cause of the FAP benefit OI. A regulation agent testified a search of Respondent's case file revealed no indication of a residency and/or address change report by Respondent. The testimony is not definitive evidence that Respondent failed to report a change in residency, however, Respondent did not appear to rebut the testimony, nor was superior evidence available.

It is found Respondent received an OI of [REDACTED] in FAP benefits which was not due to agency error. The analysis will proceed to determine if the OI was caused by an IPV by Respondent or client error.

The Code of Federal Regulations defines an IPV. Intentional program violations shall consist of having intentionally: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system. 7 CFR 273.16 (c).

DHS regulations list the requirements for an IPV. A 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 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 (1/2011), p. 1. see also 7 CFR 273(e)(6).

IPV is suspected when there is **clear and convincing** [emphasis added] evidence that the client or CDC provider has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. *Id.* 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. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

MDHHS alleged Respondent failed to update residency with MDHHS for the purpose of maintaining FAP eligibility. MDHHS contended the failure was purposeful and intentional.

A purposeful failure can be demonstrated by the windfall derived from the failure. In the present case, Respondent maintained Michigan FAP eligibility during a period when there was no FAP eligibility in Michigan. Presumably, Respondent could have received the same or comparable FAP benefits from [REDACTED] during this period. Thus, there was no apparent financial incentive for Respondent to purposefully not update residency information with MDHHS.

It is notable that Respondent's failure to update residency could reasonably be explained by innocently forgetting to report information. Though MDHHS demonstrated Respondent was previously advised of reporting requirements (see Exhibit 1, p. 29), it does not insure that a client would not forget to report information to MDHHS.

It is notable that MDHHS allowed Respondent to spend FAP benefits in [REDACTED] for an extended period of time. The allowance would reasonably signal to Respondent that continuing to receive FAP benefits from Michigan while residing in [REDACTED] was acceptable. This supports finding that Respondent did not commit an IPV.

Generally, MDHHS will have difficulty to establish a purposeful failure to report information because there is typically no documentation to verify an IPV occurred. For example, MDHHS conceded Respondent did not report information to MDHHS that was contradictory to known facts. Presented evidence was not persuasive in overcoming the general rule.

It is found MDHHS failed to clearly and convincingly establish that Respondent committed an IPV. Accordingly, it is found MDHHS may not proceed with disqualifying Respondent from benefit eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent received [REDACTED] in over-issued FAP benefits for the months of September 2015 through November 2015. The MDHHS request to establish an overissuance is **APPROVED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish that Respondent committed an IPV related to an OI of FAP benefits from September 2015 through November 2015. The MDHHS request to establish Respondent committed an IPV is **DENIED**.

CG/hw



Christian Gardocki
Administrative Law Judge
for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]