



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 26, 2016
MAHS Docket No.: 15-026721
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 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. Respondent continued receiving FAP benefits from the State of Michigan through October 2015.
3. As of July 2015, Respondent was no longer a resident of Michigan.
4. Respondent unintentionally failed to update stopped Michigan residency to MDHHS.
5. On [REDACTED], MDHHS requested a hearing to establish Respondent received an OI of [REDACTED] in FAP benefits from August 2015 through October 2015 due to an IPV.

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 August 2015 through October 2015. The document, 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 Michigan residency 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. 48-50) from [REDACTED]. The history verified EBT purchases exclusively in Michigan through [REDACTED]. Purchases

began in the State of [REDACTED] on [REDACTED], and continued through [REDACTED] single purchase in [REDACTED] occurred on [REDACTED]. A single purchase in [REDACTED] occurred on September 25, 2015.

MDHHS presented TheWorkNumber documents (Exhibit 1, pp. 50-51) dated December 29, 2015. Respondent's work address was noted to be in [REDACTED]. A last pay of [REDACTED] was stated.

Various paystubs (Exhibit 1, pp. 52-55) associated with the employer listed on TheWorkNumber documents were presented. Three of the paystubs listed a mailing address for Respondent in Michigan. Respondent's pay stub dated [REDACTED] (Respondent's last) listed a Florida address for Respondent.

A State of Michigan redetermination for medical benefits (Exhibit 1, pp. 56-85) dated July 9, 2015, was presented. The redetermination was submitted online. A mailing address for Respondent in Michigan was reported by Respondent.

State of Michigan internet history (Exhibit 1, pp. 86-87) was presented. The history indicated Respondent's Redetermination submitted on July 9, 2015, was done from a State of Florida IP address. All other listed submissions from June 2016 through July 2016 were associated with a State of Florida IP address.

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, pp. 88-89). An issuance of [REDACTED]/month in FAP benefits from August 2015 through October 2015 was listed.

Presented evidence established Respondent changed his mailing address with his employer to a Florida address in June 2016. Presented evidence established Respondent primarily spent FAP benefits in Florida from June 2016 through October 2015. Presented evidence established Respondent sent electronic documents from Florida, in June and July of 2016. Presented evidence sufficiently established Respondent was a State of Florida resident beginning June 2016, and also no longer a State of Michigan resident. As a non-Michigan resident (through at least October 2015), Respondent was not entitled to receive FAP benefits for the months from August 2015 through October 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 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 not due to agency error. The analysis will proceed to determine if the OI was caused by an IPV by Respondent.

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).

MDHHS 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 his residency with MDHHS for the purpose of maintaining FAP eligibility. MDHHS contended Respondent's failure was purposeful and intentional.

A purposeful failure can be demonstrated by the amount of gain derived from the failure. In the present case, Respondent maintained Michigan FAP eligibility during a period when there was no basis for FAP eligibility in Michigan. Presumably, Respondent could have received the same or comparable benefits from the state of residence during the OI period. Thus, there was no apparent financial incentive for Respondent to purposefully not update residency information.

It is notable that Respondent's failure to update residency could reasonably be explained by forgetting to report information to MDHHS. Though MDHHS demonstrated Respondent was advised of reporting requirements at application (see Exhibit 1, p. 18)

it does not insure that a client would not unintentionally forget to update address information with MDHHS.

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

Consideration was given to factoring a language barrier in whether Respondent purposely failed to update residency information to MDHHS. The consideration stemmed from Respondent reporting Spanish as his primary language on his application. MDHHS pointed-out Respondent's application statements were in English and included sentences which were not indicative of English difficulties. The MDHHS point was persuasive and Respondent's possible English difficulties were not factored in whether an IPV occurred.

Consideration was also given to the possibility that Respondent may not have intended to change residency at the time Respondent inaccurately reported Michigan residency to MDHHS. Respondent's last known reporting of Michigan residency to MDHHS was on [REDACTED], was only approximately 30 days after Respondent changed his address to a [REDACTED] address with his employer. Sometimes, a relocation is performed on a trial basis; such moves are not intended to be residency changes. It is reasonably possible that Respondent had not intended to permanently leave Michigan during the first 30+ days after he left Michigan. The possibility is purely speculative, however, it is a reasonably possible scenario. The possibility lessens the likelihood that an IPV occurred.

It is found MDHHS failed to clearly and convincingly establish that Respondent committed an IPV. Accordingly, it is found MDHHS may not proceed with imposing an IPV against Respondent.

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 August 2015 through October 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 August 2015 and October 2015. The MDHHS request to establish Respondent committed an IPV is **DENIED**.

Christian Gardocki

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]