



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: November 21, 2016
MAHS Docket No.: 16-008895
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 November 9, 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. [REDACTED], regulation agent manager appeared as an observer. 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. As of March 2014, Respondent was an ongoing FAP benefit recipient.
2. Respondent continued receiving FAP benefits from the State of Michigan through February 2015.

3. As of June 2014, Respondent was no longer a resident of Michigan.
4. Respondent did not intentionally fail to report stopped Michigan residency to MDHHS.
5. On [REDACTED], MDHHS requested a hearing to establish Respondent received an OI of [REDACTED] in FAP benefits from June 2014 through February 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) dated [REDACTED]. The unsigned repayment agreement alleged Respondent received [REDACTED] in over-issued FAP benefits from June 2014 through February 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. Michigan residency and/or non-residency can be inferred based on a client's circumstances.

MDHHS presented Respondent's electronic benefit transfer (EBT) card usage history (Exhibit 1, pp. 39-50). The history was from [REDACTED], [REDACTED]. The history verified EBT purchases (2 of them) exclusively in Michigan through

██████████. The expenditure history verified purchases from ██████████ and onward, exclusively in ██████████

MDHHS presented a CLEAR Report (Exhibit 1, pp. 51-53). The report was dated ██████████. A CLEAR report is known to be an investigative tool used to summarize a person's residence history based on information such as utility bills, registered vehicles, and employment. Listed residences are accompanied by dates. The most recently listed Michigan address was from February 2014. All addresses after February 2014 were in ██████████

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, pp. 54-56). A monthly issuance of ██████████ was verified from February 2014 through September 2014. A monthly issuance of ██████████ was verified from October 2014 through January 2015. An issuance for February 2015 was not apparent. Though an issuance for February 2015 was not listed on the issuance history, Respondent's expenditure history verified a ██████████ issuance for February 2015.

Presented evidence sufficiently established Respondent was a ██████████ resident (and not a Michigan resident) no later than June 2014. As a non-Michigan resident since at least June 2014, Respondent was not entitled to receive FAP benefits from June 2014 through February 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 ██████████ 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).

[An IPV is a] benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his authorized representative. Bridges Program Glossary (October 2015), p. 36. 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 (January 2016), 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 presented Respondent's assistance application (Exhibit 1, pp. 10-38) dated March 17, 2014; the application noted a request for FAP benefits. Boilerplate application language stated that a signature is an understanding of a responsibility to report changes within 10 days of the occurrence of the change.

MDHHS alleged Respondent failed to update 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. It is highly probable (though not certain), Respondent could have received the same or comparable benefits from the actual state of residence during the OI period. There was no evidence that Respondent received FAP benefits from multiple states. Thus, there was no apparent financial incentive for Respondent to purposefully not update residency information with the State of Michigan.

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. 19) it does not ensure that a client would not 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.

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 ██████ in over-issued FAP benefits from June 2014 through February 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 June 2014 through February 2015. The MDHHS request to establish that 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]