



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

Date Mailed: November 21, 2016
MAHS Docket No.: 16-008273
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 3, 2016, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], lead 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. On [REDACTED], Respondent applied for Food Assistance Program (FAP) from the State of Michigan.
2. As of November 2014, Respondent was not a State of Michigan resident.
3. Respondent unintentionally misreported State of Michigan residency to MDHHS.

4. Respondent received FAP benefits from December 2015 through April 2015 totaling [REDACTED].
5. On [REDACTED], MDHHS requested a hearing to establish Respondent received an OI of [REDACTED] in FAP benefits from December 2015 through April 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 notice alleged Respondent received [REDACTED] in over-issued FAP benefits from December 2014 through April 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 an assistance application (Exhibit 1, pp. 10-30) electronically signed by Respondent on [REDACTED] the application requested food, cash, and medical benefits. The application listed Respondent and her two minor children as household members.

MDHHS presented a portion of Respondent's electronic benefit transfer (EBT) card usage history (Exhibit 1, pp. 31-33). The history listed EBT transactions from [REDACTED]. Every transaction occurred in [REDACTED].

MDHHS presented a portion of CLEAR Report (Exhibit 1, pp. 34-39). The report was dated [REDACTED]. 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. Through April 2014, Respondent's report listed multiple addresses in [REDACTED] and Michigan through overlapping months. After April 2014, Respondent's only listed addresses were for [REDACTED] except for one date ([REDACTED]) when a Michigan address was listed. The Michigan address was the same one reported on Respondent's assistance application.

An email from a [REDACTED] address dated [REDACTED], was presented. Presumably, A lead agent with the OIG testified the email was obtained following an inquiry of Respondent's benefit history in [REDACTED]. The email stated Respondent's SNAP benefit eligibility ended after November 2014.

Presented evidence established Respondent exclusively spent FAP benefits in [REDACTED] after applying in the State of Michigan. Presented evidence also established, by a preponderance of evidence, that Respondent was a [REDACTED] resident since she applied for FAP benefits.

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 failed to report an out-of-state residential address thereby causing an OI of benefits. The allegation was supported by a preponderance of evidence.

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).

[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).

It was not disputed that Respondent misreported her state of residency when applying for FAP benefits from the State of Michigan. 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. Thus, there was no apparent financial incentive for Respondent to purposefully not update residency information.

It should also be noted that it is plausible that Respondent did not intentionally misreport an address to MDHHS. For example, Respondent may have applied for FAP benefits in Michigan after intending to go to Michigan, though not following through on the move.

MDHHS testimony conceded that a report listing the URL address (and state of the URL address) could have been presented. The absence of the report makes it less than clear and convincing that Respondent submitted her application while outside of Michigan.

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 [REDACTED] in over-issued FAP benefits from December 2014 through April 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 December 2014 through April 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]