



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: December 7, 2016

MAHS Docket No.: [REDACTED]

Agency No.: [REDACTED]

Petitioner: [REDACTED]

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 [REDACTED], 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 from at least [REDACTED].

3. Respondent received FAP benefits from the State of Tennessee from [REDACTED]
4. Respondent intentionally failed to report receipt of FAP benefits from Tennessee to the State of Michigan.
5. On [REDACTED], MDHHS requested a hearing to establish Respondent received an OI of [REDACTED] in FAP benefits from [REDACTED] 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 repay agreement (unsigned by Respondent) alleged Respondent received [REDACTED] in over-issued FAP benefits from [REDACTED]. The document, along with MDHHS testimony, alleged the OI was based on Respondent's concurrent receipt of FAP benefits from multiple states.

Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. BEM 222 (3/2013), p. 1. A person cannot receive FAP in more than one state for any month. *Id.*, p. 2.

MDHHS presented a response to an Out of State Inquiry fax (Exhibit 1, pp. 13-14). An email with a tn.gov domain stated Respondent was an ongoing FAP benefit recipient in the State of Tennessee. Dates of Respondent's FAP eligibility were not stated.

MDHHS presented an exchange of emails (Exhibit pp. 15-20). On October 26, 2015, an email with a tn.gov domain stated Respondent most recently applied for benefits (presumed to be FAP benefits) on [REDACTED]. On [REDACTED], it was stated Respondent received FAP through [REDACTED].

A history of State of Michigan FAP benefit issuances to Respondent (Exhibit 1, pp. 78-80) was presented. From [REDACTED], the history listed monthly FAP issuances of [REDACTED].

When a client group receives more benefits than they are entitled to receive, [MDHHS] must attempt to recoup the over-issuance (OI). BAM 700 (May 2014), p. 1. An... OI... is the amount of benefits issued to the client group in excess of what they were eligible to receive. *Id.* Recoupment is a [MDHHS] action to identify and recover a benefit OI. *Id.*

MDHHS established Respondent concurrently received FAP benefits from Michigan and Tennessee during the alleged OI period. Concurrent receipt of FAP benefits, by itself, sufficiently establishes an OI for the benefits issued by Michigan. It is found MDHHS established an OI of [REDACTED]. MDHHS alleged Respondent's concurrent receipt of FAP benefits was caused by an IPV.

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 alleged Respondent committed an IPV by failing to report her Tennessee residency and/or receipt of FAP benefits in Tennessee. Either failure to report, if intentional, would support an IPV.

A person is disqualified for a period of 10 years if found guilty through the Administrative Hearing Process, convicted in court or by signing a repayment and disqualification agreement (e.g., DHS-826, DHS-830) of having made a fraudulent statement or representation regarding her identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (October 2012), p. 1. MDHHS seeks to impose a 10-year disqualification against Respondent.

For a 10 year disqualification, MDHHS must establish that Respondent purposely misrepresented residency. MDHHS testimony essentially conceded Respondent did not misreport residency, she only failed to update it. For purposes of determining the length of IPV disqualification, a failure to update residency is not akin to a fraudulent statement of residency or identity.

It is found MDHHS failed to establish a basis for a 10 year disqualification against Respondent. The analysis will proceed to determine if a different disqualification period is justified.

MDHHS presented Respondent's application for FAP benefits (Exhibit 1, pp. 23-51) dated [REDACTED]. Petitioner's signature was noted to be an understanding of various responsibilities listed elsewhere in the application; a responsibility to report changes was among the stated client responsibilities.

MDHHS presented Respondent's application for FAP benefits (Exhibit 1, pp. 52-76) dated October 7, 2015. Petitioner's signature was noted to be an understanding of various responsibilities listed elsewhere in the application; a responsibility to report changes was among the stated client responsibilities.

MDHHS presented Respondent's State of Michigan FAP benefit expenditure history (Exhibit 1, pp. 83-91). The history listed expenditures exclusively within Michigan from [REDACTED]. Expenditures exclusively within Tennessee were listed from [REDACTED]. Respondent did not use her EBT card again until [REDACTED], where an account balance of [REDACTED] was listed. Respondent's FAP eligibility was [REDACTED] [REDACTED].

Respondent appeared to initially have no fraudulent intent in failing to report a change in residency. Had Respondent initially had such an intent, she would have likely not allowed State of Michigan issued FAP benefits to build over several months. By [REDACTED] [REDACTED] Respondent clearly had a fraudulent intent. She was aware of her previous FAP eligibility in Michigan while receiving Tennessee benefits; Respondent chose to spend the FAP benefits rather than report that she should not have received them. It is found Respondent committed an IPV by failing to report dual receipt of FAP benefits.

It is found MDHHS clearly and convincingly established that Respondent committed an IPV. Accordingly, it is found MDHHS may proceed with imposing an IPV against Respondent.

The standard disqualification period is used in all instances except when a court orders a different period. BAM 725 (January 2016), p. 16. [MDHHS is to] apply the following disqualification periods to recipients determined to have committed an IPV... one year for the first IPV... two years for the second IPV[, and] lifetime for the third IPV. *Id.*

MDHHS conceded Respondent had no history of IPV. Thus, a 1 year disqualification period is justified.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish a basis for a 10 year disqualification against Respondent. The MDHHS request for a 10 year disqualification is **DENIED**.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent committed an IPV (Respondent's 1st) resulting in receipt of [REDACTED] in over-issued FAP benefits from [REDACTED]. The MDHHS request to establish an overissuance and 12 month disqualification is **APPROVED**.

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]
[REDACTED]

[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]