



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 19, 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. On [REDACTED], Respondent began employment in the State of Georgia.

3. As of [REDACTED], Respondent was no longer a Michigan resident.
4. Respondent intentionally failed to report a change in residency and employment to MDHHS.
5. Respondent's purposeful failure to report employment and a change in residency resulted in [REDACTED] in over-issued FAP benefits from [REDACTED]
[REDACTED]
6. On [REDACTED], MDHHS requested a hearing to establish Respondent received an OI of [REDACTED] in FAP benefits from [REDACTED]
[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 document (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 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. 70-73). The history spanned from [REDACTED], through [REDACTED]. The history verified EBT purchases exclusively in Michigan through [REDACTED] 2015. The expenditure history verified purchases from [REDACTED] exclusively in Georgia. Respondent's next EBT expenditure occurred on [REDACTED] in Michigan. All subsequent purchases (from July 11, 2015 onward) occurred exclusively in Georgia.

MDHHS presented documents from "TheWorkNumber" (Exhibit 1, pp. 74-76) dated [REDACTED]. TheWorkNumber is an internet site that MDHHS can sometimes utilize to obtain a client's employment information. Respondent was stated to be an inactive employee as of [REDACTED]. A Michigan residential address was listed for Respondent.

MDHHS presented documents from "TheWorkNumber" (Exhibit 1, pp. 77-81) dated [REDACTED]. Respondent's stated hire date was [REDACTED]. Respondent was stated to be inactive as of [REDACTED]. A State of Georgia residential address for Respondent was stated.

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, p. 82). A monthly issuance of [REDACTED] was verified from [REDACTED].

Respondent's FAP issuance history verified expenditures exclusively in Georgia since [REDACTED], and only a single expenditure not in Georgia after [REDACTED]. The evidence, along with Respondent's employment in Georgia, sufficiently established Respondent's residency outside of Michigan at least since [REDACTED]. As a non-Michigan resident since at least [REDACTED], Respondent was not entitled to receive FAP benefits from [REDACTED].

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 [REDACTED] 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).

[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 electronically submitted application for FAP benefits (Exhibit 1, pp. 11-39) dated [REDACTED]. 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 presented Respondent's electronically submitted application for FAP benefits (Exhibit 1, pp. 40-67) dated [REDACTED]. 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. The application reported a State of Michigan residential address.

MDHHS presented documents purporting to verify the location of Respondent when the applications were electronically submitted to MDHHS. It was noted Respondent performed 2 submissions on [REDACTED]. One submission was from a Georgia server. A second submission was from an Illinois server.

MDHHS alleged Respondent failed to update residency with MDHHS for the purpose of maintaining FAP eligibility. The intent required for an IPV can be established by the amount of gain derived from the alleged fraudulent actions.

Respondent maintained Michigan FAP eligibility during a period when there was no basis for FAP eligibility in Michigan. It is reasonably possible (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. This consideration supports rejecting a finding that Respondent committed an IPV.

Respondent also appeared to fail to report employment income which was performed in Georgia. Generally, the State of Michigan will have difficulty in learning that a client is working out-of-state, unless the client reports the employment. Respondent could have been motivated to not report a change in residency to hinder the State of Michigan from learning about out-of-state employment. This consideration supports finding Respondent committed an IPV.

It is notable that Respondent submitted a FAP application to Michigan on [REDACTED] and reported a Michigan residence. As of the date, Respondent had been in Michigan at least once ([REDACTED], per EBT expenditure history), though all other transactions since [REDACTED], occurred in Georgia.

Presented documentation verified Respondent started employment in Georgia, the day after he applied for State of Michigan benefits. It is possible that Respondent only learned of his employment in Georgia on his employment start date. If this is true, then Respondent's application for benefits is not necessarily a written misreporting of information.

When Respondent began employment on [REDACTED], and failed to report any change in residency or employment to MDHHS, Respondent's actions are less justifiable. As of [REDACTED], Respondent worked in Georgia and was a resident of Georgia. Respondent had a duty to report to Michigan a change in residency and employment income; Respondent did neither.

It is found that MDHHS clearly and convincingly established that Respondent committed an IPV. Accordingly, 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 did not allege Respondent previously committed an 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 established that Respondent committed an IPV based on receipt of [REDACTED] in over-issued FAP benefits for the period from [REDACTED] [REDACTED]. The MDHHS request to establish an overissuance and IPV (Respondent's 1st) 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]

[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]