



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: January 4, 2017  
MAHS Docket No.: 16-010909  
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 December 8, 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 (OI) 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. From [REDACTED] through March 2015, Respondent was not a Michigan resident.
3. Respondent intentionally misreported her residency to MDHHS.

4. From November 2014 through March 2015, Respondent received [REDACTED] in FAP benefits from the State of Michigan.
5. On [REDACTED], MDHHS requested a hearing to establish Respondent received an OI of [REDACTED] in FAP benefits from November 2014 through March 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. 6-7) dated [REDACTED]. The repay agreement (unsigned by Respondent) alleged Respondent received an over-issuance of [REDACTED] in FAP benefits from November 2014 through March 2015. The repayment agreement, along with MDHHS testimony, alleged the OI was based on Respondent's failure to report out-of-state residency.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2016), p. 11. Other changes [besides income] must be reported within 10 days after the client is aware of them. *Id.*, p. 12. These include, but are not limited to, changes in... address.... *Id.*

[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 evidence of Respondent's circumstances.

MDHHS presented Respondent's EBT expenditure history (Exhibit 1, pp. 37-43) from [REDACTED]. Expenditures exclusively in Michigan were listed through [REDACTED]. Expenditures exclusively in [REDACTED] were listed from [REDACTED], onward.

Email correspondence (Exhibit 1, pp. 44-46) was presented. A response from someone with a [REDACTED] email domain stated Respondent received FAP benefits in [REDACTED] from November 2013 through June 2014, and again from May 2015 through January 2016.

MDHHS presented TheWorkNumber documents (Exhibit 1, pp. 47-48) concerning employment by Respondent. A start date for employment of [REDACTED], was stated. Biweekly earnings from [REDACTED], were stated. A residential address for Respondent in [REDACTED] was stated. The information was stated to be current as of [REDACTED].

MDHHS presented a Case Comments- Summary (Exhibit 1, p. 51). MDHHS presented the document to show there were no case notes from Respondent's specialist indicating that Respondent reported moving from Michigan. It was noted on [REDACTED], Respondent's specialist stated he/she spoke with a person who stated that Respondent moved to [REDACTED] in November 2015.

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, pp. 53-54) from November 2014 through March 2015. Issuances of [REDACTED] were listed for each benefit month; an additional [REDACTED] supplemental issuance for November 2014 was listed.

Respondent's exclusive use of EBT benefits in [REDACTED] from [REDACTED], and onward, was persuasive evidence that Respondent was no longer a Michigan resident throughout the alleged OI benefit period. The conclusion is further bolstered by Respondent's employment in [REDACTED] during the alleged OI benefit period. Respondent's non-Michigan residency disqualified her from FAP eligibility from the State of Michigan FAP eligibility for the months from November 2015 through March 2015.

It is found that MDHHS established that Respondent received an OI of [REDACTED] in FAP benefits. The analysis will proceed to determine if the OI 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 presented Respondent's electronically-submitted Assistance Application (Exhibit 1, pp. 11-22) signed by Respondent on August 4, 2014. The application stated that Respondent's signature was certification that Respondent reviewed and agreed with the application's Information Booklet; the Information Booklet informs clients of various MDHHS policies, including the requirement of reporting changes within 10 days. MDHHS did not allege the application contained any misreported information.

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. This consideration supports rejecting that Respondent purposely failed to report non-Michigan residency to MDHHS; Respondent's reporting of residency suggests otherwise.

MDHHS presented Respondent's electronically-submitted Assistance Application (Exhibit 1, pp. 23-36) signed by Respondent on October 6, 2014. The application listed a Michigan address for Respondent, her spouse, and her child.

As of [REDACTED], Respondent had used her EBT card exclusively in [REDACTED] since [REDACTED], and continued using the EBT benefits in [REDACTED] onward. An IPV is

the only reasonably imaginable explanation for why Respondent reported a Michigan address to MDHHS during a time she resided in [REDACTED]

Generally, a written statement contradicting established information is evidence of an intent to defraud. Respondent's misreporting on her application does not justify ignoring the general rule.

It is found MDHHS clearly and convincingly established that Respondent committed an IPV. Accordingly, it is found MDHHS may proceed with disqualifying Respondent from benefit eligibility.

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 testimony conceded an IPV had not previously been imposed against Respondent. Thus, MDHHS is justified in imposing a 12 month disqualification penalty 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 November 2014 through March 2015. The MDHHS request to establish an overissuance and an IPV against Respondent is **APPROVED**.

CG/hw



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**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]