



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 5, 2017
MAHS Docket No.: 16-011833
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 19, 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 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 FAP benefit recipient.
2. As of [REDACTED], Respondent was no longer a resident of Michigan.

3. Respondent unintentionally failed to report stopped Michigan residency to MDHHS.
4. From September 2014 through January 2015, Respondent received [REDACTED] in FAP benefits.
5. On [REDACTED], MDHHS requested a hearing to establish Respondent received an OI of [REDACTED] in FAP benefits from September 2014 through January 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 unsigned Intentional Program Violation Repayment Agreement (Exhibit 1, pp. 6-7) dated [REDACTED]. The unsigned repayment agreement alleged Respondent received [REDACTED] in over-issued FAP benefits from September 2014 through January 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 EBT expenditure history (Exhibit 1, pp. 50-52) from [REDACTED]. Expenditures exclusively in Michigan were listed through [REDACTED]. Expenditures exclusively in [REDACTED] were listed from [REDACTED], onward.

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, p. 53) from July 2014 through January 2015. Issuances totaling [REDACTED] from September 2014 through January 2015 were listed.

MDHHS presented a Michigan school district letter (Exhibit 1, p. 55) dated [REDACTED], [REDACTED]. The letter stated Respondent's daughter (who was one of the members listed on Respondent's application) was deactivated from the school district's system as of [REDACTED]. The stated reason for deactivation was that the child moved out-of-state. The letter was supported by documentation stating the same (see Exhibit 1, p. 54).

MDHHS presented a lease agreement (Exhibit 1, pp. 61-64) dated [REDACTED]. The lease was obtained in response to a subpoena (see Exhibit 1, p. 60) sent by MDHHS. The lease was signed by Respondent, her spouse, and Respondent's apparent landlord. The lease was for a residence in [REDACTED].

MDHHS presented a CLEAR report (Exhibit 1, pp. 57-59) for Respondent. It was noted Respondent received a driver's license from [REDACTED] on [REDACTED]. Various Michigan addresses were listed covering various dates from January 2012 through March 2015. Various [REDACTED] addresses were listed covering various dates since 2005.

The listing of a Michigan residency through March 2015 is somewhat indicative that Respondent lived in Michigan as of March 2015. CLEAR report dates associated with addresses are known to be imprecise. For example, a CLEAR report might site an end date associated with a residency based on a home sale date or date utility service ended; those dates might be long after a person moved from a residence.

Respondent's exclusive use of FAP benefits in [REDACTED] since July 2014 was highly indicative of [REDACTED] residency since July 2014. Respondent's child not being in school as of September 2014 was further evidence supporting [REDACTED] residency.

It is found Respondent was not a Michigan resident as of July 2014 and at least through January 2015. As a non-Michigan resident from July 2014 through January 2015, Respondent was not entitled to receive FAP benefits from Michigan during the alleged OI benefit period.

It is found MDHHS established Respondent received [REDACTED] in over-issued FAP benefits from September 2014 through January 2015. 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 did not allege Respondent falsely reported residency. MDHHS only alleged Respondent purposely failed to report a change in 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.*

MDHHS presented Respondent's electronically-submitted assistance application (Exhibit 1, pp. 11-39) dated [REDACTED], requesting FAP benefits. A Michigan residential address was reported by Respondent. 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.

A purposeful reporting 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 probable (though not certain), Respondent could have received the same or comparable FAP 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, it does not ensure that a client would not forget to update residency 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.

MDHHS did not present written documentation from Respondent which contradicted known facts. Generally, MDHHS will have difficulty in establishing a clear and convincing purposeful failure to report information when there is not written documentation from a respondent which contradicts known facts. Presented evidence was not persuasive in overcoming the general rule.

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 (or disqualification period) 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 September 2014 through January 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 September 2014 through January 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]