



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: January 23, 2017  
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 (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. As of [REDACTED], Respondent was no longer a Michigan resident.

3. Respondent continued receiving FAP benefits from the State of Michigan from at least [REDACTED].
4. Respondent received FAP benefits from Arkansas from [REDACTED].
5. Respondent intentionally failed to report a change of residency and out-of-state receipt of FAP benefits to MDHHS.
6. 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 unsigned Intentional Program Violation Repayment Agreement (Exhibit 1, pp. 5-6) dated [REDACTED]. The document alleged Respondent received [REDACTED] in over-issued FAP benefits from [REDACTED]. The document alleged the OI was based on Respondent's out-of-state expenditures. MDHHS policy does not bar clients from spending FAP benefits outside of Michigan. MDHHS testimony clarified the OI was based on Respondent's out-of-state residency, as supported by Respondent's EBT expenditure history.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (January 2016), p. 1. An overissuance [bold lettering removed] is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. *Id.* Recoupment [bold lettering removed] is a MDHHS action to identify and recover a benefit overissuance. *Id.*, p. 2.

[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 a portion of Respondent's FAP benefit issuance history (Exhibit 1, pp. 34-35). Monthly benefit issuances of █████ were listed for █████. Monthly benefits issuances of █████ were listed from █████.

MDHHS presented Respondent's EBT expenditure history (Exhibit 1, pp. 36-44) from █████. Expenditures exclusively in Michigan were listed through █████. Expenditures exclusively in Arkansas were listed from █████ onward (not counting 5 expenditures in Mississippi).

Brief consideration was given to whether Respondent could have remained in Michigan while spending EBT benefits outside of Michigan. Such a possibility is infinitesimal based on the distance between Michigan and the alleged state of residence.

Consideration was given to whether a duration outside of Michigan is sufficient to infer non-Michigan residency. A 6 month period outside of Michigan is deemed to be sufficient evidence a stoppage in Michigan residency.

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

It is found MDHHS established Respondent received █████ in over-issued FAP benefits during the alleged OI period. 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 handwritten Assistance Application (Exhibit 1, pp. 10-33). Respondent's signature was dated [REDACTED]. On the signature page, 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 contended a 10 year disqualification was justified. The contention was based solely on Respondent's receipt of FAP benefits from multiple states.

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 his 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.

MDHHS presented a copy of an email (Exhibit 1, p. 45) dated [REDACTED]. The regulation agent appearing for MDHHS testified the email was sent by staff from the Arkansas agency responsible for issuing FAP benefits. The agent also testified the email was obtained following an inquiry about Respondent's FAP benefit history in Arkansas. Respondent's Arkansas FAP benefit history included issuances from [REDACTED].

MDHHS alleged Respondent failed to update residency. MDHHS did not allege Respondent misreporting residency (or identity). For purposes of determining the length

of IPV disqualification, a failure to report a change in residency or receipt of out-of-state FAP benefits does not equate to a fraudulent statement of residency or identity.

It is found MDHHS failed to establish a basis for a 10 year disqualification. The analysis will proceed to determine if a lesser penalty is appropriate.

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 (July 2013), p. 1. A person cannot receive FAP in more than one state for any month. *Id.*, p. 3.

MDHHS alleged Respondent committed an IPV by failing to report residency outside of Michigan and/or receipt of FAP benefits from Arkansas. Either failure to report, if intentional, would support an IPV.

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.*

Respondent's receipt of FAP benefits from Arkansas and Michigan from [REDACTED] is indicative of a purposeful failure to update residency. Consideration was given to whether Respondent had a duty to report receipt out-of-state receipt of benefits.

Receipt of benefits from another state happens to not be among the examples of items listed in MDHHS policy that must be reported. Though receipt of out-of-state benefits is not specifically listed, it is deemed to be such an obvious circumstance to report that no excuse will be given to clients who fail to report receipt out-of-state benefits.

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. The present case is an example of an exception to the general rule.

It is possible that Respondent timely reported to MDHHS receipt of benefits from another state and/or a change in residency. It is possible Respondent's specialist failed to take action following the reporting. It is possible that Respondent sincerely thought receipt of FAP benefits from multiple states was allowable based on the specialist's unresponsiveness to Respondent's reporting. These scenarios are theoretically possible, but exceptionally improbable. FAP benefit recipients may not be aware of most MDHHS policies, however, all should be aware that it is improper to receive FAP benefits from multiple states. If a client only received FAP benefits from multiple states for 1 month, perhaps some questions could be raised if there was intent to receive

duplicate benefits. For clients receiving FAP benefits from multiple states for a period of 3 months, there is less doubt that the client intended to commit fraud.

It is found Respondent purposely failed to report to MDHHS receipt of out-of-state FAP benefits and residency. The failure to report establishes 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 testimony conceded Respondent had no prior history of IPV's. 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 IPV disqualification against Respondent. The MDHHS request to establish Respondent committed an IPV justifying 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 1<sup>st</sup>) resulting in receipt of ██████ in over-issued FAP benefits from ██████ ██████ ██████ ██████ ██████. The MDHHS request to establish an overissuance and 12 month disqualification 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

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]

**DHHS**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED]