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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: February 8, 2017
MAHS Docket No.: 16-011120
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 January 12, 2017, 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), Medical Assistance (MA), and Family Independence Program (FIP) benefits from the State of Michigan.

2. Respondent's FIP and FAP eligibility, in part, factored a household that included a daughter and two sons.
3. As of [REDACTED], Respondent did not reside with her two sons.
4. The inclusion of Respondent's two sons resulted in OIs for September 2014 and October totaling [REDACTED] in FIP benefits and [REDACTED] in FAP benefits.
5. As of [REDACTED], Respondent was a resident of [REDACTED]
6. Beginning December 2014, Respondent received FAP benefits from the State of [REDACTED] through April 2014.
7. From December 2014 through April 2015, Respondent received [REDACTED] in FAP benefits from Michigan.
8. From December 2014 through May 2015, Respondent received MA benefits for herself and two daughters, which costed a total of [REDACTED].
9. The OIs were caused by a combination of Respondent's failure to update residency, failure to report receipt of out-of-state benefits, and failure to report changes in household.
10. Respondent's failures to report were intentional.
11. 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).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. MDHHS (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. MDHHS (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. 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 unsigned agreement alleged an OI benefit period ranging from September 2015 through May 2015. MDHHS alleged Respondent received benefit overissuances of [REDACTED] in FAP benefits, [REDACTED] in FIP benefits, and [REDACTED] in MA benefits.

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.

MDHHS presented a benefit application (Exhibit 1, pp. 23-65) requesting FAP and FIP benefits. The application was electronically submitted to MDHHS by Respondent on [REDACTED]. Respondent's application reported a Michigan residential address. Boilerplate application language stated that Respondent's signature was certification that the applicant 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. Respondent listed herself, a daughter, and two sons as household members.

MDHHS presented a Change Report (Exhibit 1, pp. 66-67). Respondent signed the report on [REDACTED]. Respondent reported the recent birth of a second daughter.

MDHHS presented a document of an email (Exhibit 1, p. 73) from a person with an Alabama.gov domain name. The email stated various documents concerning Respondent's application for FAP benefits were attached.

MDHHS presented a case record (Exhibit 1, p. 77) for a FAP benefit case in [REDACTED]. The document listed a household that included Respondent's sons, and a third party as head of household. The document appeared to verify that a third party received FAP benefits in [REDACTED] in part, based on custody of Respondent's sons. An application date of [REDACTED], was listed.

An [REDACTED] county court order (Exhibit 1, pp. 78-84) dated [REDACTED], was presented. The order concerned Respondent's sons. Listed parties to the case included Respondent's sons' biological father and a guardian ad-litem. The order cited the parties stipulated that "child is in this state w/ no legal custodian." The order stated that custody of Respondent's sons was awarded to their biological father; Respondent was awarded rights of visitation.

The FIP benefit OI was based on improper group size. MDHHS alleged Respondent received FIP benefits based on a group size of 4 persons, which included Respondent's sons. MDHHS alleged Respondent was entitled to only receive FIP benefits based on a group size of 2 persons.

Only the primary caretaker can receive FIP for a child. BEM 210 (October 2014), p. 10. The primary caretaker is the caretaker who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half of the days in a month, when averaged over a twelve-month period. *Id.*, p. 9.

The stipulation within the [REDACTED] court order was persuasive verification that Respondent's sons were residents of [REDACTED] in August 2014 and not living with Respondent. The order also awarded custody of Respondent's sons' to the father. Respondent did not appear for the hearing to rebut any of the presented evidence. The evidence made it improbable that Respondent was the primary caretaker to her sons in September 2014 or October 2014. The order was consistent with the presented case record which verified a third party had custody of Respondent's children as of April 2015.

It is found Respondent was not the primary caretaker for her sons in September or October of 2014. Accordingly, Respondent was not eligible to receive FIP benefits for her sons in September 2014 or October 2014.

MDHHS presented Respondent's FIP benefit history (Exhibit 1, p. 92, 99) from September 2014 and October 2014. Three issuances of [REDACTED] were listed.

MDHHS presented FIP benefit OI budgets (Exhibit 1, pp. 95-97) for September 2014 and October 2014. A corresponding Issuance Summary (Exhibit 1, p. 98) was also presented. The budgets factored a group size of 2 persons. MDHHS testimony indicated the budgets excluded Respondent's sons as group members. An OI totaling [REDACTED] was calculated.

MDHHS established that Respondent received an OI of [REDACTED] in FIP benefits for September 2014 and October 2014. The analysis will proceed to evaluate the alleged FIP benefit OI for September 2014 and October 2014 which was also based on the allegation that Respondent did not have custody of her sons.

[Concerning FAP benefits,] when a child spends time with multiple caretakers who do not live together such as joint physical custody, parent/grandparent, etc., [MDHHS is to] determine a primary caretaker. BEM 212 (October 2015), p. 3. Only one person can be the primary caretaker and the other caretaker(s) is considered the absent caretaker(s). *Id.* The child is always in the FAP group of the primary caretaker. *Id.*

It was already established that Respondent was not entitled to receive FIP benefits for her sons due to her lack of status as a primary caretaker. The same conclusion applies to the alleged FAP benefit OI.

MDHHS presented FAP benefit OI budgets (Exhibit 1, pp. 93-94) for September 2014 and October 2014. A corresponding Issuance Summary (Exhibit 1, p. 95) was also presented. The budgets factored a group size of 2 persons. MDHHS testimony indicated the budgets excluded Respondent's sons as group members. An OI totaling [REDACTED] was calculated.

MDHHS presented a portion of Respondent's FAP benefit history (Exhibit 1, pp. 90-91, 100). An issuance of [REDACTED] for September 2014 was listed. An issuance of [REDACTED] for October 2014 was listed. Issuances of [REDACTED] were listed from November 2014 through April 2015.

It is found MDHHS established a FAP benefit OI of [REDACTED] for September 2014 and October 2014. A FAP benefit OI from December 2014 through April 2015 was primarily based on Respondent's 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 (July 2013), p. 1. A person cannot receive FAP in more than one state for any month. *Id.*, p. 3.

MDHHS presented Respondent's State of [REDACTED] FAP benefit issuance history (Exhibit 1, p. 76). Issuances for the benefit months from May 2014 through August 2014 and December 2014 through May 2015 were listed.

Respondent's Michigan-issued and [REDACTED]-issued FAP benefit histories verified concurrent receipt of FAP benefits from December 2014 through April 2015. Respondent would not have been entitled to receive any FAP benefits from Michigan while receiving FAP benefits from [REDACTED] MDHHS established Respondent received a total of [REDACTED] from December 2014 through April 2015.

It is found Respondent received an OI of FAP benefits of [REDACTED] from December 2014 through April 2015 due to concurrent receipt of FAP benefits. The FAP benefit OI for November 2014 was based on Respondent's alleged lack of Michigan 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. 68-72) from [REDACTED]. Listed expenditures in Michigan only occurred through [REDACTED]. Expenditures exclusively in [REDACTED] were listed beginning [REDACTED].

MDHHS presented a Lexis/Nexis report (Exhibit 1, pp. 87-89). The report listed various [REDACTED] addresses as Respondent residences from various dates from 2008-2015.

MDHHS presented Respondent's State of [REDACTED] FAP benefit expenditure history (Exhibit 1, pp. 85-86). From June [REDACTED], all purchases were made in [REDACTED]. From [REDACTED], through [REDACTED], no purchases were made.

Respondent's FAP expenditure history and application for FAP benefits in [REDACTED] was persuasive evidence that Respondent was a resident of [REDACTED] as of [REDACTED]. Respondent's expenditure history was indicative that Respondent was a Michigan resident as of [REDACTED], her last usage date in Michigan. Presented evidence insufficiently verified where Respondent lived between [REDACTED], and [REDACTED]. If Respondent was a resident of Michigan as of [REDACTED], she would have been eligible to receive FAP benefits from Michigan for the entire month.

Further, even if Respondent moved on [REDACTED], to become [REDACTED] resident, MDHHS would have had to issue FAP benefits to Respondent for November after issuing timely notice of closure (see BAM 220). It is found MDHHS failed to establish a FAP benefit OI for November 2014. The analysis will concluded with the alleged MA benefit OI.

[MDHHS is to] initiate recoupment of an overissuance (OI) due to client error or intentional program violation (IPV), not when due to agency error (see BAM 700 for definitions). BAM 710 (July 2013), p. 1. For an OI... [not due to unreported income or a

change affecting need allowances,] the OI amount is the amount of MA payments. *Id.*, p. 2.

MDHHS presented a Medicaid application (Exhibit 1, pp. 13-22) electronically-submitted to MDHHS. Respondent signed the application on [REDACTED]. Respondent's application reported a Michigan residential address.

MDHHS presented a history of State of Michigan costs in providing health insurance for Respondent and two children (Exhibit 1, pp. 101-103). The expenses were from November 2014 through May 2015. The medical coverage cost for Respondent and her 2 children for November 2014 was [REDACTED]. A total cost of [REDACTED] was listed (see Exhibit 1, p. 101) for all months from November 2014 through May 2015.

MDHHS did not allege that Respondent concurrently received MA from multiple states. MDHHS is only pursuing an OI of MA based on Respondent and her two daughters' receipt of MA. Thus, the MA benefit OI appears to be solely based on Respondent's out-of-state residency.

MDHHS alleged Respondent failed to timely report residency change to MDHHS, in part, based on Respondent's continued receipt of benefits when she resided outside of Michigan. The allegation was also based, in part, on an absence of reporting documented in Respondent's case file. A regulation agent testified a search of Respondent's case file revealed no indication that Respondent timely reporting out-of-state residency. The testimony is not definitive evidence that Respondent failed to timely report [REDACTED] residency, however, Respondent did not appear to rebut the testimony. It is found that Respondent failed to report her [REDACTED] residency to MDHHS.

It was already found that the earliest date Respondent was established to live in [REDACTED] was [REDACTED]. MDHHS was denied a FAP benefit OI for November 2014 because Respondent would have been eligible for benefits had she lived in Michigan for even just 1 day in November 2014. The same finding is applicable to the MA benefit OI analysis. Thus, MDHHS is denied a MA benefit OI for November 2014.

MDHHS is entitled to a MA benefit OI for all months after November 2014 as it was established that Respondent was [REDACTED] resident in November 2014. Thus MDHHS established a benefit OI totaling [REDACTED]. The analysis will proceed to determine if Respondent's OIs were 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 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.

For a 10 year disqualification, MDHHS must establish that Respondent purposely misrepresented residency. MDHHS only alleged a failure by Respondent to update residency. 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 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 an application for FAP benefits from the State of [REDACTED] (Exhibit 1, pp. 74-75). The address listed an address in [REDACTED]. Respondent signed the application on [REDACTED]. Respondent checked, "No" in response to a question asking if she received FAP benefits that month from another state. Respondent checked, "No" in response to a question asking if she received FAP benefits the previous month from another state. Respondent's application listed a household that included her sons.

Respondent's state of [REDACTED] application verified Respondent misreported continued receipt of benefits in Michigan (very possibly her household members too). Technically, Respondent's misreporting does not verify an IPV concerning Michigan's benefit issuances, but the misreporting is indicative of a fraudulent intent. If Respondent was fraudulent in reporting to [REDACTED], it is more likely that she was fraudulent in reporting and/or not reporting to Michigan.

MDHHS alleged Respondent committed an IPV by failing to report residency outside of Michigan and/or receipt of out-of-state FAP benefits. 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.*

Receipt of benefits from another state happens to not be among the listed items. 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 verified Respondent reported to MDHHS on [REDACTED], a household which included her 2 sons. Only six days later a court order in [REDACTED] verified Respondent's 2 sons lived in [REDACTED]. The evidence does not definitively verify Respondent's 2 sons did not live with her in Michigan at the time Respondent submitted her application, but the short timeframe renders it reasonably possible that Respondent's sons were in [REDACTED] as of [REDACTED], and that Respondent misreported information.

It is found Respondent purposely failed to report to MDHHS receipt of out-of-state FAP benefits. It is further found that Respondent misreported and/or purposely failed to update the residency of her sons. Both failures justify imposing an IPV disqualification 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 had a 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 Respondent received an OI of MA or FAP benefits for November 2014. MDHHS also failed to establish Respondent committed an IPV justifying a 10 year disqualification. The requests for IPV and OI are **PARTIALLY DENIED**.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent received an OI of [REDACTED] in FIP benefits for September 2014 and October 2014. It is found MDHHS established Respondent received an OI of [REDACTED] in FAP benefits for the benefits months of October 2014 through April 2014 (excluding November 2014). It is found MDHHS established Respondent received an OI of [REDACTED] in MA benefits for the months from December 2015 through May 2015. It is further found that MDHHS established that Respondent committed an IPV (Respondent's 1st) concerning FAP and FIP benefits justifying a 12 month disqualification. The MDHHS requests to establish an overissuance and IPV are **PARTIALLY 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]

Petitioner

[REDACTED]

Respondent

[REDACTED]