



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: February 17, 2017
MAHS Docket No.: 16-012704
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 19, 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 (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], and through December 2013, Respondent was no longer a resident of Michigan.

3. From September 2013 through December 2013, Respondent's Michigan non-residency caused an OI of \$ [REDACTED] in FAP benefits.
4. Through December 2013, Respondent did not report a change in residency to MDHHS.
5. Respondent's failure to report a change in residency was not intentional.
6. On [REDACTED], MDHHS requested a hearing to establish Respondent received an OI of [REDACTED] in FAP benefits from August 2013 through December 2013 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 repay agreement alleged Respondent received an over-issuance of \$ [REDACTED] in FAP benefits from August 2013 through December 2013. 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 Respondent's EBT expenditure history (Exhibit 1, pp. 10-11) from [REDACTED]. Expenditures exclusively in Alabama were listed (not counting 3 expenditures in [REDACTED] made on [REDACTED], and July 8, 2013).

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, p. 18) from August 2013 through December 2013. Monthly issuances of \$200 were listed from August 2013 through October 2013. Monthly issuances of \$[REDACTED] were each listed for November and December 2013.

MDHHS presented documentation of an email chain (Exhibit 1, pp. 21-22). The testifying agent appeared to email a State of [REDACTED] government email domain name inquiring if Respondent received food benefits from the State of [REDACTED]. A response indicated Respondent received food benefits in [REDACTED] from January 2014 through June 2014.

Respondent's exclusive use of EBT benefits in [REDACTED] and [REDACTED] beginning July 2013, and subsequent application for FAP benefits in [REDACTED] was indicative that Respondent was no longer a Michigan resident as of [REDACTED] (the date of first EBT usage in Alabama). Respondent's non-Michigan residency disqualified him from FAP eligibility from the State of Michigan.

The "10-10-12 Rule" is the unofficial name for the policies identifying why MDHHS must generally wait at least 32 days from the date of a circumstance change before beginning an OI period. The 32 days factor the timeframe clients have to report information (see BAM 105), MDHHS' standard of promptness for processing changes (see BAM 220), and the time given to clients before a negative action takes effect (see BAM 220).

The circumstance change in the present case was Respondent's verified out-of-state residency beginning [REDACTED]. Applying the 32 day timeframe to the present case would justify FAP disqualification no earlier than the first month after applying the 32 day timeframe after the circumstance change date; the effective month would be September 2013.

It is found MDHHS failed to establish an OI for August 2013. It is further found that MDHHS established that Respondent received an OI of [REDACTED] in FAP benefits for the period from September 2013 through December 2013. The analysis will proceed to determine if Respondent's non-reporting amounted to 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 Redetermination (Exhibit 1, pp. 12-15). The document was sent to Respondent's reported Michigan address. Respondent's signature was dated September 18, 2013. A change in address was not indicated.

In the OI analysis, it was found that Respondent was not a Michigan resident as of [REDACTED]. Respondent's failure to report a change in residency on a reporting document two months later is curious. At the very least, Respondent's failure to update residency in writing renders it highly probable that Respondent failed to update his residency to MDHHS throughout the OI period. The analysis will proceed to determine if Respondent's failure to report an address change justifies a finding that an IPV was committed.

Generally, a written statement from a client contradicting facts is persuasive evidence of an intent to commit fraud. Technically, Respondent did not misreport information in writing. Respondent's Redetermination failed to report information, but did not misreport information. A second consideration also supports rejecting the occurrence of an IPV.

Barring exceptional circumstances, an IPV requires a windfall of benefits. In the present case, Respondent appeared to have no such windfall. It is highly probable that

Respondent could have received identical and/or comparable food benefits from Alabama during the OI period. Thus, Respondent's failure to update residency appears to not have netted benefits that Respondent could not have otherwise received had he timely reported a residency change.

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.

It is found MDHHS failed to clearly and convincingly establish that Respondent committed an IPV. Accordingly, it is found MDHHS may not proceed with disqualifying Respondent from benefit eligibility.

DECISION AND ORDER

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 due to unreported change in residency for the months from August 2013 through December 2013. The MDHHS request to establish Respondent committed an IPV is **DENIED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish that Respondent received an OI of \$ [REDACTED] for August 2013. The MDHHS request to establish Respondent committed an IPV is **PARTIALLY DENIED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent received \$ [REDACTED] in FAP benefits from September 2013 through December 2013. The MDHHS request to establish an overissuance is **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]