



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 24, 2017
MAHS Docket No.: 16-012906
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 26, 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 FAP benefit recipient.
2. From [REDACTED], Respondent was not a Michigan resident.

3. From [REDACTED], Respondent was not a Michigan resident.
4. From [REDACTED], Respondent received \$ [REDACTED] in FAP benefits.
5. From [REDACTED], Respondent received [REDACTED] in FAP benefits.
6. Respondent unintentionally failed to report stopped Michigan residency and/or employment income to MDHHS.
7. On [REDACTED], MDHHS requested a hearing to establish Respondent received an OI of \$ [REDACTED] in FAP benefits from August 2014 through May 2016 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 an over-issuance of \$ [REDACTED] in FAP benefits from August 2014 through May 2016. MDHHS testimony clarified that the alleged OI occurred over two different periods- August 2014 through October 2014 and February 2016 through May 2016. 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 documents from "TheWorkNumber.com" (Exhibit 1, pp. 11-13) dated [REDACTED]. The documents listed Respondent's employment information with an employer. A hire and start date of employment of [REDACTED], was stated. Respondent's first listed pay date was [REDACTED]. Weekly listed pays through May 20, 2016, were listed. The document listed a residential address in [REDACTED] for Respondent. All pays were for 40 hours other than a pay on [REDACTED], which was for 36 hours.

MDHHS presented Respondent's FAP expenditure history (Exhibit 1, pp. 15-24) from [REDACTED]. Expenditures exclusively made in Michigan were listed through [REDACTED]. From [REDACTED], Respondent's expenditures occurred exclusively in [REDACTED]. From [REDACTED], through [REDACTED], Respondent's expenditures again exclusively occurred in Michigan. Beginning [REDACTED] 5, Respondent's expenditures were mixed between [REDACTED] and Michigan. Beginning [REDACTED] Respondent's remaining expenditures (occurring on 8 different dates) all occurred in Michigan.

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, p. 14, 111-114) from April 2014 through May 2016. From August 2014 through October 2014, Respondent received a total of \$ [REDACTED] in FAP benefits. From February 2016 through May 2016, Respondent received a total of \$ [REDACTED] in FAP benefits.

MDHHS presented Respondent's application for FAP and medical benefits (Exhibit 1, pp. 54-81). Respondent's electronic signature was dated [REDACTED] 15. Respondent reported employment in [REDACTED] ended on [REDACTED]. Respondent reported she was homeless, while using a mailing address in [REDACTED] Michigan. MDHHS did not allege that the application reported misinformation.

Respondent's EBT expenditure history verified exclusive usage of EBT benefits in Kentucky for a nearly 5 month period in 2014. This consideration is supportive of Kentucky residency during the period of EBT usage in [REDACTED]. A finding of [REDACTED] residency from August 2014 through October 2014 is consistent with Respondent's reporting in January 2015 that she recently stopped employment with an employer located in [REDACTED] (see Exhibit 1, p. 59).

It is found MDHHS established Respondent was a [REDACTED] resident for the period from [REDACTED], through [REDACTED]. Thus, Respondent was ineligible for the \$ [REDACTED] in FAP benefits issued from August 2014 through October 2014.

Respondent's EBT expenditure history verified usage in Texas and Michigan during the second alleged OI period. The history could be interpreted in different ways.

If Respondent was the exclusive user of her EBT card, Respondent's EBT history tended to verify she continued Michigan residency, while working in [REDACTED]. This consideration is further supported by Respondent's exclusive usage of EBT benefits in Michigan from April 2016 and forward. Other considerations were more indicative that Respondent was not a Michigan resident.

MDHHS presented Respondent's application for FAP (Exhibit 1, pp. 82-108). Respondent's electronic signature was dated [REDACTED]. Respondent reported a residence in Michigan. Respondent reported that she was homeless while using a mailing address in [REDACTED] Michigan (different from her previously reported [REDACTED] Michigan address). MDHHS did not allege that Respondent's application reported any misinformation.

MDHHS established Respondent worked full-time in [REDACTED] from [REDACTED], through [REDACTED]. Employment, particularly full-time employment, within a state is highly indicative of residency of that state. The possibility that Respondent maintained Michigan residency while working out-of-state was considered. The relatively large distance between Michigan and [REDACTED] made such a scenario implausible. This consideration is supportive in finding that Respondent was a non-Michigan resident during the second alleged OI period.

As it happened, Respondent's time outside of Michigan happened to be for periods of less than 6 months. The relatively short periods outside of Michigan increases the possibility that Respondent maintained a permanent Michigan residence while using a temporary out-of-state residence. The possibility of a permanent Michigan residence is lessened by Respondent's reporting differences before and between, the alleged OI periods.

A finding that Respondent was a [REDACTED] resident during the second alleged OI period is not necessarily contradicted by Respondent's EBT expenditure history. It is improbable that Respondent would have worked full-time in [REDACTED] while making purchases in Michigan on 9 different dates during the time she was employed in [REDACTED]. A likely explanation is that a second person accessed Respondent's EBT benefits in Michigan while Respondent lived and worked in [REDACTED].

It is found that Respondent was a [REDACTED] resident during her time of [REDACTED] employment. Thus, Respondent was not a Michigan resident during her time of employment in [REDACTED]. It is found that MDHHS established Respondent improperly received \$ [REDACTED] from February 2016 through May 2016 due to Respondent's out-of-state residency. MDHHS further alleged that both OIs were 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).

DHS regulations list the requirements for an IPV. 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 (1/2011), 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).

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2016), p. 11. [Income] changes must be reported within 10 days of receiving the first payment reflecting the change. *Id.* 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 application for FAP benefits (Exhibit 1, pp. 25-53). Respondent's electronic signature was dated [REDACTED]. The application stated Respondent's signature was certification of an understanding of a responsibility to report changes to MDHHS within 10 days. Respondent reported she was the only household member of a residence in [REDACTED], Michigan. MDHHS did not allege that the application reported misinformation.

MDHHS alleged Respondent failed to report to MDHHS updated residency information; generally, the allegation was established. MDHHS further alleged Respondent's failure was purposeful.

Respondent's failure to report residency and/or employment income to MDHHS could reasonably be explained by Respondent forgetting to report. Though MDHHS applications advise clients to report changes within 10 days, it does not ensure that a client would not accidentally forget.

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 disqualification 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 a total of \$ [REDACTED] in over-issued FAP benefits from August 2014 through October 2014 and February 2016 through May 2016. 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. 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]