



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.: 16-014914
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 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. Respondent continued receiving FAP benefits from the State of Michigan from at least May 2016 through July 2016.

3. Respondent received FAP benefits from Florida for the months of May 2016 through July 2016.
4. Respondent intentionally failed to report receipt of FAP benefits from Florida to MDHHS.
5. On [REDACTED], MDHHS requested a hearing to establish Respondent received an OI of \$ [REDACTED] in FAP benefits from May 2016 through July 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. 6-7) dated [REDACTED]. The unsigned agreement alleged Respondent received \$ [REDACTED] in over-issued FAP benefits from May 2016 through July 2016. The document, along with MDHHS testimony, alleged the OI was based on Respondent's concurrent receipt of FAP benefits from multiple states.

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.

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 FAP expenditure history (Exhibit 1, pp. 35-38) from [REDACTED]. During the hearing, MDHHS provided additional documents (Exhibit 2, pp. 1-2) to reflect expenditures made through the hearing date. Expenditures exclusively made in Michigan were listed through [REDACTED], [REDACTED]. Since [REDACTED], Respondent's expenditures occurred exclusively in [REDACTED].

MDHHS presented Respondent's FAP issuance history (Exhibit 1, p. 39) from February 2016 through July 2016. Monthly issuances of \$ [REDACTED] were listed from May 2016 through July 2016.

MDHHS presented documentation of emails (Exhibit 1, pp. 40-41). The emails appeared to verify an inquiry made to a person with State of [REDACTED] government email domain concerning Respondent's food benefit issuance history with the State of [REDACTED]. A response from the [REDACTED] governmental employee listed issuances to Respondent for the benefit months from May 2016 through August 2016. The total issuances exceeded \$ [REDACTED].

MDHHS established Respondent concurrently received FAP benefits from Michigan and Florida during the alleged OI period. Concurrent receipt of FAP benefits, by itself, sufficiently establishes an OI for the benefits issued by Michigan.

It is found MDHHS established an OI of \$ [REDACTED]. MDHHS alleged Respondent's concurrent receipt of FAP benefits was 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 testimony essentially conceded Respondent did not misreport residency, Respondent only failed 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 does not equate to a fraudulent misrepresentation 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 Respondent's handwritten application for FAP benefits (Exhibit 1, pp. 11-32). Respondent's signature was dated [REDACTED]. 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. MDHHS did not allege the application contained any misreported information.

MDHHS alleged Respondent committed an IPV by failing to report residency outside of Michigan and/or receipt of FAP benefits from [REDACTED]. 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 did not present written documentation from Respondent which contradicted known facts. MDHHS testimony indicated a failure by Respondent to report State of [REDACTED] FAP benefit issuances can be inferred based on the absence of specialist notes indicated Respondent reported the information.

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 theoretically possible that Respondent timely reported to MDHHS receipt of State of [REDACTED] benefits, the specialist failed to take action, and that Respondent had no reason to not spend State of Michigan FAP benefits during the time Respondent received Florida benefits; it is 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 only 1-2 months, 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 about the client's intent.

It is found Respondent purposely failed to report to MDHHS receipt of out-of-state FAP benefits. The failure to report establishes Respondent committed an IPV. Accordingly, it is found 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 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 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 1st) resulting in receipt of \$ [REDACTED] in over-issued FAP benefits from May

2016 through July 2016. The MDHHS request to establish an overissuance and 12 month disqualification is **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]