



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: March 17, 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. On [REDACTED], Respondent applied for FAP benefits.
2. As of [REDACTED], Respondent was a Texas resident.
3. Respondent's Texas residency continued through at least [REDACTED]

4. Respondent received FAP benefits of [REDACTED] for [REDACTED] and [REDACTED]
5. From [REDACTED] through [REDACTED] Respondent received FAP benefits totaling [REDACTED]
6. Through [REDACTED], Respondent did not report a change in residency to MDHHS.
7. Respondent's failure to report a change in residency was not intentional.
8. 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 an over-issuance of [REDACTED] in FAP benefits from [REDACTED]. The document, along with MDHHS testimony, alleged the OI was based on Respondent's failure to report out-of-state residency.

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.

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 application for FAP benefits (Exhibit 1, pp. 10-38). Respondent's electronic signature was dated [REDACTED]. Respondent's application reported homelessness and a Michigan mailing address. No employment income was reported. Boilerplate language advised clients that a signature was certification of an understanding of a responsibility to report changes to MDHHS within 10 days.

MDHHS presented Respondent's EBT expenditure history (Exhibit 1, pp. 40-44) from [REDACTED]. Every expenditure occurred in Texas.

MDHHS presented documentation from TheWorkNumber.com (Exhibit 1, pp. 46-48). The documentation stated listed information was current as of [REDACTED]. The documentation stated Respondent started a job on [REDACTED]. Regular pay dates from [REDACTED], through [REDACTED], were listed. Respondent's address was listed in Texas.

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, p. 39) from [REDACTED]. Respondent's [REDACTED] FAP issuance was [REDACTED]. Subsequent issues were for [REDACTED].

Respondent's exclusive use of FAP benefits in Texas as of [REDACTED] sufficiently verified Texas residency as of that date. It is less clear whether Respondent was a Texas resident as of her application date of [REDACTED].

It is theoretically possible that Respondent completed the benefit application while a Michigan resident and moved to Texas sometime in the following 3 days. MDHHS contended that it is probable that such a scenario did not occur because a homeless person would not likely have the means to be able to move so far and so quickly. The MDHHS contention has some logic, though it is wholly speculative.

It should be noted that MDHHS could have presented evidence of the server location from where Respondent's application was sent. Had MDHHS verified Respondent sent her application from Texas, a finding that Respondent was a Texas resident as of [REDACTED] would have been more likely. MDHHS offered to obtain such evidence after the hearing. The offer was declined because Respondent was entitled to receive notice of the evidence before the hearing.

It is found MDHHS failed to establish that Respondent was not a Michigan resident before [REDACTED]. The finding impacts the alleged OI period.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2016), p. 11. [MDHHS is to] act on a change reported by means other than a tape match within 10 days of becoming aware of the change. BAM 220 (October 2015), p. 7. If the reported change will decrease the benefits or make the household ineligible, action must be taken and a notice issued to the client within 10 days of the reported change. *Id.*, p. 8.

There are two types of written notice: adequate and timely. BAM 220 (1/2014), p. 2. An adequate notice is a written notice sent to the client at the same time an action takes effect (not pended). *Id.* A timely notice is mailed at least 11 days before the intended negative action takes effect. The action is pended to provide the client a chance to react to the proposed action. *Id.*, p. 4.

The "10-10-12 Rule" is the unofficial name for the MDHHS policies generally requiring at least 32 days between the date of a circumstance change and the first month of an alleged OI period. The verified date of Respondent's residency change began [REDACTED]. Applying the 10-10-12 Rule results in an OI beginning no earlier than [REDACTED].

It is found MDHHS failed to establish an OI for [REDACTED] and [REDACTED]. It is further found that MDHHS established an OI from [REDACTED] through [REDACTED] totaling [REDACTED]. The analysis will proceed to consider whether the OI 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).

Respondent's failure to update residency information could reasonably be explained by Respondent forgetting to report information. Though MDHHS applications advise clients to report changes within 10 days, it does not ensure that a client would not accidentally forget. It is also possible that Respondent reported changes, however, MDHHS did not process them.

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.

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 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 [REDACTED]. 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 [REDACTED] in over-issued FAP benefits from [REDACTED]. The MDHHS request to establish an overissuance 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 over-issued FAP benefits from [REDACTED]. The MDHHS request to establish an overissuance is **PARTIALLY 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

**DHHS**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED]