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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: March 24, 2017
MAHS Docket No.: 16-014088
Agency No.: [REDACTED]
Petitioner: MDHHS
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 February 23, 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. Respondent continued receiving FAP benefits from the State of Michigan from at least May 2015 through October 2015.

3. Respondent received FAP benefits from [REDACTED] from at least May 2015 through October 2015.
4. Respondent intentionally failed to report receipt of FAP benefits from [REDACTED] to MDHHS.
5. On August 3, 2016, MDHHS requested a hearing to establish Respondent received an OI of [REDACTED] in FAP benefits from May 2015 through October 2015 due to an IPV.
6. As of the date of hearing, Respondent had no previous history of IPV's.

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. 7-8) dated August 3, 2016. The unsigned document alleged Respondent received [REDACTED] in over-issued FAP benefits from May 2015 through October 2015. 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 application to the State of [REDACTED] (Exhibit 1, pp. 82-89) dated April 2, 2015. The application requested medical benefits. Respondent reported that she was living in Michigan but would be living with her mother in [REDACTED].

MDHHS presented Respondent's FAP expenditure history (Exhibit 1, pp. 50-56). Expenditures in Michigan were exclusively made from July 31, 2015, through April 12, 2015. From April 22, 2015, through November 7, 2015, Respondent's expenditures occurred exclusively in [REDACTED].

MDHHS presented Respondent's FAP issuance history (Exhibit 1, p. 49) from May 2015 through October 2015. Monthly issuances of [REDACTED] were listed for each benefit month.

MDHHS presented documentation of emails (Exhibit 1, pp. 57-58). The emails documented a State of Michigan request for information about Respondent's FAP benefit history from [REDACTED]. The response from a State of [REDACTED] domain name indicated various documents concerning Respondent's FAP benefit issuance history were attached.

MDHHS presented a State of [REDACTED] Application for the Supplemental Nutrition Assistance Program (SNAP) (Exhibit 1, pp. 63-74). Respondent's signature was dated April 30, 2015. A State of [REDACTED] stamp indicated a receipt date of May 7, 2015; the date was consistent with other State of [REDACTED] documentation (see Exhibit 1, pp. 59-60). Respondent listed a residential address in [REDACTED]. Respondent answered that she had not received FAP benefits in the previous 60 days (see Exhibit 1, p. 64).

MDHHS presented an [REDACTED] Department of Human Services Recipient Ledger Inquiry (Exhibit 1, p. 76). The history listed monthly FAP issuances to Respondent from May 2015 through January 2016.

MDHHS presented Respondent's FAP benefit expenditure history from the State of [REDACTED] (Exhibit 1, pp. 78-81). The history verified Respondent spent all [REDACTED]-issued benefits issued during the alleged OI period.

MDHHS established Respondent concurrently received FAP benefits from Michigan and [REDACTED] during the alleged OI period. Concurrent receipt of FAP benefits, by itself, sufficiently establishes an OI for the benefits issued by Michigan. For good measure, out-of-state residency would have also disqualified Respondent from receiving FAP benefits during the OI period.

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.

For a 10 year disqualification, MDHHS must establish that Respondent purposely misrepresented residency. MDHHS testimony 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 of residency state 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 application for FAP benefits (Exhibit 1, pp. 14-42). Respondent's signature was dated January 29, 2015. 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 benefits issued by another state can be inferred based on Respondent's continued receipt of FAP benefits from Michigan.

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 benefits outside of Michigan, the specialist failed to take action, and that Respondent had no reason to not spend FAP/SNAP benefits from multiple states; 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 6 months, there is less doubt about the client's intent.

MDHHS presented an undated typed statement from Respondent (Exhibit 1, p. 90). Presumably, Respondent sent the letter to MDHHS in response to the OI and IPV allegations. The letter claimed Respondent was hospitalized and unaware that State of Michigan FAP benefits were being issued on her behalf. The letter claimed Respondent

told a friend to inform MDHHS that she was not living in Michigan. The letter also claimed that Respondent gave her EBT card to a friend to buy food for Respondent.

Respondent could have verbalized her claims but was unavailable to the hearing. Respondent's hearing absence renders all of her statements from the letter to be hearsay and inadmissible.

Respondent did not submit any documentation to support her claims. Even if a portion of Respondent's claims were accurate (e.g. being hospitalized), her allegations do not adequately explain why she is not responsible for her own EBT card and her own reporting requirements.

It is also notable that Respondent's State of [REDACTED] application reported not receiving FAP benefits in the previous 60 days. As of the application date, Respondent was an ongoing recipient of FAP benefits issued by the State of Michigan. Technically, Respondent's misreporting to [REDACTED] is not directly insightful concerning whether Respondent reported to MDHHS that she received benefits from [REDACTED]. A blatant misreporting to the State of [REDACTED] concerning her FAP benefit history renders it less probable that Respondent would have verbally reported to Michigan her receipt of benefits from [REDACTED].

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

2015 through October 2015. 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]