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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: April 25, 2017
MAHS Docket No.: 16-017045
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 March 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 Food Assistance Program (FAP) and Medical Assistance (MA) recipient.
2. As of June 29, 2015, Respondent was a non-Michigan resident.
3. Respondent's non-Michigan residency continued through February 2016.

4. From August 2015 through February 2016, respondent received \$ [REDACTED] in over-issued FAP benefits.
5. MDHHS failed to establish that Respondent's continued receipt of FAP and MA benefits was the fault of Respondent.
6. On [REDACTED], MDHHS requested a hearing to establish Respondent received an OI of \$ [REDACTED] in FAP benefits and \$ [REDACTED] in MA benefits from August 2015 through February 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).

Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. MDHHS (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. 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 document alleged Respondent received [REDACTED] in over-issued FAP benefits and \$ [REDACTED] in over-issued MA benefits; both OIs occurring from August 2015 through February 2016. MDHHS testimony, alleged the OI was based, in part, on Respondent's concurrent receipt of benefits.

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.

A copy of an email (Exhibit 1, p. 57) dated [REDACTED], was presented. MDHHS testimony indicated the email was sent in response to an inquiry to the [REDACTED] agency responsible for issuing FAP benefits. The email stated that "[REDACTED]" received SNAP and TANF benefits in [REDACTED] for November 2014 and December 2014. SNAP benefits were also issued in August 2015. It was stated that a Medicaid case was opened since September 2015. Screenshots to verify the statements were stated to follow.

MDHHS presented Respondent's FAP issuance history (Exhibit 1, p. 58) from August 2015 through February 2016. The listed issuances totaled \$ [REDACTED].

MDHHS presented Respondent's household Medicaid cost history (Exhibit 1, pp. 55-56). The total cost of Medicaid for Respondent's household from August 2015 through December 2015 was \$ [REDACTED].

MDHHS presented no other evidence of Respondent's alleged receipt of concurrent benefits. The MDHHS presentation of evidence had multiple problems.

First, MDHHS alleged that an OI, based on concurrent receipt of FAP benefits, from August 2015 through February 2016 was justified. The presented email only verified FAP benefits for one month from the alleged OI period.

Secondly, MDHHS testimony conceded that screenshots verifying the alleged [REDACTED] issuances were never sent. The absence of screenshots leaves the email to be unverified hearsay, and much less reliable than if screenshots had been sent.

Thirdly, even assuming the email was sufficient verification of a person's receipt of Arizona benefits, the stated person was not Respondent. The email listed a person with a different last name than Respondent as receiving [REDACTED] benefits. It is possible Respondent received [REDACTED] benefits and the emailer simply misspelled Respondent's name; such a scenario is purely speculative and should have been addressed before the hearing. This consideration infects all statements in the email concerning all of Respondent's allegedly received benefits from [REDACTED].

It is found MDHHS failed to establish an OI based on duplicate benefit issuances. MDHHS also alleged an OI 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.*

[For MA benefits,] a Michigan resident is an individual who is living in Michigan except for a temporary absence. *Id.*, p. 2. Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished. *Id.* Example: Individuals who spend the winter months in a warmer climate and return to their home in the spring. *Id.* They remain MI residents during the winter months. *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. The OI allegation was based purely on circumstantial evidence.

MDHHS presented Respondent's EBT expenditure history (Exhibit 1, pp. 44-54) from [REDACTED]. The history listed expenditures exclusively made in Michigan through [REDACTED]. Respondent's history listed expenditures exclusively made in [REDACTED] beginning [REDACTED].

Consideration was given to whether Respondent could have exclusively used benefits in another state while residing in Michigan. Michigan and [REDACTED] are geographically apart so that commuting between Michigan and [REDACTED] is implausible.

Residency in [REDACTED] for a period exceeding 8 months is sufficient evidence of non-Michigan residency. It is found Respondent was a resident of [REDACTED] during the alleged OI benefit period. It must then be considered whether the benefit issuances were caused by Respondent's or MDHHS' error.

MDHHS policy categorizes overissuances into 3 different types: client error, agency error, and intentional fraud (see BAM 700). Client and Agency [FAP benefit] errors are not pursued if the estimated amount is less than \$250 per program. BAM 700, p. 9.

The alleged FAP-benefit OI exceeds \$250. Thus, it is irrelevant whether MDHHS or Respondent caused the OI. MDHHS established an OI of \$[REDACTED] in FAP benefits. The MDHHS policy is different concerning over-issuances of MA benefits.

[For MA over-issuances, MDHHS is to] initiate recoupment of an overissuance (OI) due to client error or intentional program violation (IPV), not when due to agency error (see BAM 700 for definitions). BAM 710 (July 2013), p. 1. For an OI... [not due to unreported income or a change affecting need allowances,] the OI amount is the amount of MA payments. *Id.*, p. 2.

A regulation agent testified a search of Respondent's case file revealed no indication of Respondent timely reporting Arizona residency. The testimony is not definitive evidence that Respondent failed to update residency information, however, Respondent did not appear to rebut the testimony, nor was superior evidence available.

The above consideration is sufficient to establish client-error in cases when unreported income causes an OI of budgets. In such cases, clients have the incentive of maintaining higher FAP benefit levels when not reporting income. The same motive does not apply to the present case. Presumably, Respondent could have received Medicaid from Michigan or [REDACTED]. Having multiple cases of Medicaid does not provide Respondent with any additional coverage than having a single Medicaid case.

It should also be noted that it is possible that Respondent's case worker never documented Respondent's reporting of a change in residency. MDHHS presented no evidence that such a scenario did not occur.

It is found that MDHHS failed to establish that MA benefits were improperly issued because of the fault of Respondent. Thus, no OI of MA benefits may be established. The analysis will proceed to consider whether the FAP benefit 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).

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.

During the hearing, MDHHS conceded a 10-year disqualification was inappropriate based on the lack of evidence to support the allegation that Respondent received concurrent benefits. The MDHHS concession was consistent with presented evidence. The analysis will proceed to consider an IPV for a shorter duration.

MDHHS presented Respondent's application for FAP and MA benefits (Exhibit 1, pp. 11-43). The application was electronically signed by Respondent on [REDACTED]. Boilerplate application stated that Respondent's signature was certification that the applicant read and understood his or her "Rights & Responsibilities"; the "Rights & Responsibilities" section included language informing clients of the responsibility to report changes to MDHHS within 10 days. MDHHS did not allege the application contained any misreported information.

Respondent's alleged failure to update residency information concerning FAP benefit eligibility 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. These considerations support rejecting a finding that Respondent committed an IPV.

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 and that no reporting was needed. 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 from August 2015 through February 2016. The MDHHS request to establish that 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 MA benefits totaling \$ [REDACTED] over the period from August 2015 through February 2016. The MDHHS request to establish that received an OI 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 August 2015 through February 2016. 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]

Petitioner

[REDACTED]

Respondent

[REDACTED]