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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]
[REDACTED]
[REDACTED]

Date Mailed: June 27, 2017
MAHS Docket No.: [REDACTED] 17-000237
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. Respondent was an ongoing recipient of Food Assistance Program (FAP) benefits from the State of Michigan.
2. From [REDACTED], and through at least [REDACTED] Respondent was not a Michigan resident.

3. From [REDACTED] and through at least [REDACTED], Respondent was not a Michigan resident.
4. From [REDACTED], Respondent received [REDACTED] in FAP benefits from Michigan.
5. From [REDACTED], Respondent received [REDACTED] in FAP benefits from Michigan.
6. Respondent did not purposely fail to report Michigan residency.
7. 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 and MDHHS testimony alleged Respondent received an over-issuance totaling [REDACTED] in FAP benefits from [REDACTED]. MDHHS testimony alleged the total OI covered 2 separate periods- [REDACTED] from [REDACTED] and [REDACTED] from [REDACTED]. The document and MDHHS testimony alleged the OI was based on Respondent's non-Michigan 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.

MDHHS policy categorizes overissuances into 3 different types: client error, agency error, and intentional fraud (see BAM 700). Client and Agency errors are not pursued if the estimated amount is less than \$250 per program. BAM 700, p. 9. This policy allows MDHHS to pursue an OI no matter which party was at fault (assuming an OI of \$250 or more is established).

[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. The OI allegation was based purely on circumstantial evidence.

MDHHS presented documentation from TheWorkNumber.com (Exhibit 1, pp. 72-75). The listed information was noted to be current as of [REDACTED]. The document stated Respondent's most recent hire date was [REDACTED]. Regular biweekly pays from [REDACTED], were listed. An address in Texas was listed for Respondent.

MDHHS presented documentation from TheWorkNumber.com (Exhibit 1, pp. 76-78). The listed information was noted to be current as of [REDACTED]. The document stated Respondent's original hire date was [REDACTED]. Pay dates of December [REDACTED] were listed. Subsequent pay dates from J [REDACTED] [REDACTED] [REDACTED] [REDACTED] were listed. A Texas address was listed for Respondent.

MDHHS presented documentation from TheWorkNumber.com (Exhibit 1, pp. 79-82). The listed information was noted to be current as of [REDACTED]. The document stated Respondent's most recent hire date was [REDACTED]. Regular biweekly pays from [REDACTED], through [REDACTED], were listed. A Texas address was listed for Respondent.

MDHHS presented a Documentation Record (Exhibit 1, p. 83) by a non-testifying regulation agent. The record documented a call from Respondent on [REDACTED] reporting a current address in Texas.

MDHHS presented Respondent's EBT expenditure history (Exhibit 1, pp. 86-97) from [REDACTED], through [REDACTED]. Expenditures exclusively in Michigan were listed through [REDACTED]. Expenditures in Texas occurred from [REDACTED] [REDACTED]. Expenditures exclusively in Michigan were listed from [REDACTED], through [REDACTED]. Expenditures in Texas occurred from [REDACTED] [REDACTED].

TheWorkNumber.com documentation tended to directly verify Respondent's state of residence only at the end of each alleged OI period. Generally, an employee's last reported state of residency reported to an employer is indicative of residency for that state throughout the employment.

Respondent's near-exclusive use of EBT benefits outside of Michigan during the alleged OI period, along with presented employment information was persuasive evidence that Respondent resided in Texas during the alleged OI periods. Respondent's change in residency can be inferred to have first occurred no later than the first date of extended EBT usage outside of Michigan.

It is found that MDHHS established that Respondent was not a Michigan resident from [REDACTED], and through at least [REDACTED]. It is found that MDHHS established that Respondent was not a Michigan resident from [REDACTED] and through at least [REDACTED]. Thus, Respondent was not entitled to receive FAP benefits during the OI period.

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, pp. 84-85). FAP benefit issuances of [REDACTED] were listed for each month from [REDACTED] and from [REDACTED].

It is found MDHHS established that Respondent received an OI of [REDACTED] in FAP benefits. The analysis will proceed to determine if 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).

MDHHS did not allege Respondent falsely reported residency. MDHHS only alleged Respondent purposely failed to timely report a change in residency.

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.*

MDHHS presented Respondent's application for FAP benefits (Exhibit 1, pp. 11-41). Respondent's electronic signature was dated [REDACTED]. The application stated that Respondent's signature was certification that Respondent 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.

Even if Respondent did not timely report a change in residency, the failure to report may not have been intentional. A failure to report 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 established that Respondent received [REDACTED] in over-issued FAP benefits from [REDACTED]. 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 due to a change in residency for the months from [REDACTED] [REDACTED]. The MDHHS request to establish 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]

Petitioner

[REDACTED]

Respondent

[REDACTED]