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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]
[REDACTED]
[REDACTED]

Date Mailed: July 20, 2017
MAHS Docket No.: [REDACTED] 17-00926
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, of the Office of Inspector General. Respondent did not appear for the hearing.

ISSUES

The first issue is whether MDHHS established Respondent received an over-issuance (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], through [REDACTED] Respondent was not a Michigan resident.

3. From [REDACTED], Respondent received [REDACTED] in FAP benefits.
4. Respondent did not intentionally fail to report a change in residency.
5. 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. 6-7) dated [REDACTED]. The document and MDHHS testimony alleged Respondent received an over-issuance of [REDACTED] in FAP benefits from [REDACTED]. The document and MDHHS testimony alleged the OI was based on Respondent's 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.

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 [REDACTED] per program. BAM 700, p. 9. Thus, MDHHS can establish an OI no matter which party was at fault, assuming an OI of [REDACTED] 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.

MDHHS presented Respondent's EBT expenditure history (Exhibit 1, pp. 40-46) from [REDACTED], through [REDACTED]. Expenditures exclusively in Michigan were listed through [REDACTED]. Expenditures exclusively in New York were listed from [REDACTED], through the end of the history.

MDHHS presented Respondent's CLEAR report (Exhibit 1, pp. 50-63). A CLEAR report is not direct evidence of a client's residency, though it contains useful information such as a person's reported addresses with associated dates based on events such as a credit inquiry or utility service. The documentation indicated Respondent registered a vehicle in Colorado on [REDACTED]. A New York address was associated with Respondent from [REDACTED], to [REDACTED]. A Michigan address was associated with Respondent for one date only (February 10, 2012).

Consideration was given to the possibility that a client could live in one state and spend EBT benefits in a different state. Michigan and New York are sufficiently far apart that it is improbable that Respondent could have lived in Michigan while spending FAP benefits outside of Michigan.

Given Respondent's EBT expenditure history and CLEAR report information, it is highly probable that Respondent was a non-Michigan resident throughout the alleged OI period. It is found Respondent was not a Michigan resident beginning [REDACTED] [REDACTED] (the first date Respondent continuously spent FAP benefits outside of Michigan).

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, pp. 47-49) from [REDACTED]. FAP benefit issuances of [REDACTED]/month were listed for each benefit month.

Respondent's out-of-state residency during the alleged OI period rendered Respondent to be ineligible to receive FAP benefits during the alleged OI period. It is found MDHHS established that Respondent received an OI of [REDACTED] in FAP benefits. The analysis will proceed to determine if Respondent's non-reporting amounted to 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 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 FAP benefit application (Exhibit 1, pp. 12-30). Respondent's handwritten signature was dated [REDACTED]. Respondent reported a Michigan address. Respondent indicated an intent to remain in Michigan. Handwritten notes (likely from a MDHHS specialist) indicated Respondent moved from New York to Michigan on [REDACTED]. MDHHS did not allege that the application reported any misinformation.

MDHHS presented a Case- Search/Summary (Exhibit 1 pp. 38-39). The document indicated Respondent's mailing address remained the same throughout Respondent's FAP eligibility period from [REDACTED]

MDHHS presented a Notice of Case Action (Exhibit 1, pp. 31-35) dated [REDACTED]. The notice included boilerplate language advising Respondent to report any changes affecting benefit eligibility within 10 days of the change.

Respondent's apparent failure to update residency information could reasonably be explained by Respondent forgetting to report information. Though reporting documents 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 a change, however, MDHHS did not process the change. 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 unreported change in residency for the months from [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]