



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: August 2, 2017  
MAHS Docket No.: [REDACTED] 17-004128  
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 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. Beginning [REDACTED], Respondent was not a Michigan resident.
3. Respondent was a FAP recipient through [REDACTED]

4. Respondent was an MA recipient through [REDACTED].
5. On [REDACTED], MDHHS requested a hearing to establish Respondent received OIs of [REDACTED] in FAP benefits from [REDACTED] and [REDACTED] in MA 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).

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 document and MDHHS testimony alleged Respondent received an over-issuance of [REDACTED] in FAP benefits from [REDACTED]. MDHHS also alleged an OI of MA benefits in the amount of [REDACTED].

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 alleged Respondent received an OI of FAP and MA benefits due to non-Michigan residency. The analysis will begin with the alleged FAP-benefit OI.

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 [REDACTED] per program. BAM 700, p. 9. Thus, MDHHS can establish an OI of FAP benefits, regardless of fault, as long as the OI exceeds [REDACTED].

[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. 46-51). Expenditures exclusively in Michigan were listed from [REDACTED], [REDACTED]. Expenditures exclusively in Oklahoma were listed from [REDACTED], through [REDACTED].

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

MDHHS presented various correspondence between MDHHS and the equivalent Oklahoma agency (Exhibit 1, pp. 52-59). Correspondence from the Oklahoma social services agency indicated Respondent received benefits from Oklahoma beginning [REDACTED]. MDHHS did not allege that Respondent received benefits from Oklahoma and Michigan within the same month.

Respondent's EBT history was highly indicative that Respondent physically stayed in Oklahoma beginning [REDACTED]. It should be noted that being in a state does not equate to residing in a state.

MDHHS presented a CLEAR report (Exhibit 1, p. 37). The report listed Respondent associated with an Oklahoma address on [REDACTED] (for one day only) and again from [REDACTED]. Various addresses in [REDACTED] were associated with periods throughout [REDACTED] and on [REDACTED].

The source for Respondent's Michigan residency on [REDACTED], was a utility bill. This happened to be Respondent's last date associated with a Michigan address. It is not known with certainty, but the CLEAR report was indicative that Respondent

ceased utility service on [REDACTED]. Stopping utility service on [REDACTED], is highly indicative of ending residency. It is possible that Respondent had the intent to leave Michigan before ending utility service, but this is not known. Mere presence in Oklahoma from [REDACTED] is not necessarily indicative of Respondent's residency because she could have planned to return to Michigan while in Oklahoma. Given presented evidence, it is found that MDHHS established that Respondent was not a Michigan resident as of [REDACTED].

If Respondent's non-Michigan residency was not established until mid-[REDACTED] an OI cannot be established through [REDACTED]. MDHHS alleged an OI of [REDACTED] from FAP benefits issued to Respondent from [REDACTED] (see Exhibit 1, pp. 60-61). Thus, an OI of FAP benefits cannot be established.

It is found that MDHHS failed to establish an OI of FAP benefits due to Respondent's alleged non-Michigan residency. The analysis will proceed to consider the alleged OI of MA benefits.

[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.*

[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.

MDHHS presented Respondent's MA cost history (Exhibit 1, pp. 62-63). Various payments from [REDACTED] allegedly totaling [REDACTED] were listed.

In the FAP-OI analysis, it was found Respondent's non-Michigan residency could not be established before [REDACTED] 5. The finding applies to the analysis of residency concerning an alleged MA-OI. In the FAP analysis, it was found MDHHS could not establish an OI as of [REDACTED] based on Respondent's date of non-Michigan residency. The same finding applies to the alleged OI through [REDACTED] due to MDHHS timeframes in processing changes.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2016), p. 11. Changes [in income] must be reported within 10 days of receiving the first payment reflecting the change. *Id.*

[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 pending). *Id.* A timely notice is mailed at least 11 days before the intended negative action takes effect. The action is pending to provide the client a chance to react to the proposed action. *Id.*, p. 4.

For income increases that result in a benefit decrease, action must be taken and notice issued to the client within the Standard of Promptness (FAP -10 calendar days, FIP/SDA -15 workdays). BEM 505 (July 2015), p. 11. The effective month is the first full month that begins after the negative action effective date. *Id.*

The “10-10-12 Rule” is the unofficial name for the policies generally requiring at least 32 days between the date of a circumstance change and the first month that an OI can be established when based on the circumstance change. The circumstance change in the present began [REDACTED]. Applying the 10-10-12 Rule results in MDHHS being unable to establish an OI for a benefit month earlier than November 2015 (possibly even [REDACTED]). MDHHS did not allege an OI of FAP or MA benefits earlier than [REDACTED].

It is found that MDHHS did not establish an OI of MA benefits. The analysis will proceed to consider the IPV allegation.

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. 11-45). Respondent's electronic signature was dated [REDACTED]. MDHHS presented the document to verify that Respondent was informed of a responsibility to report changes within 10 days. Boilerplate application language stated that the applicant's signature was certification that the applicant read and understood a section titled "Rights & Responsibilities"; reporting income within 10 days was a stated responsibility. MDHHS did not allege that the application reported any misinformation.

It was already found that MDHHS failed to establish an OI of FAP or MA benefits. Without establishing an OI, it cannot be found that Respondent fraudulently failed to report a change in residency which caused an OI of benefits. It is found that MDHHS failed to establish that Respondent committed an IPV

### **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 received overissuances of [REDACTED] in FAP benefits from [REDACTED] or [REDACTED] in MA benefits from [REDACTED]. It is further found that MDHHS failed to establish that Respondent committed an IPV related to the alleged OIs. The MDHHS request to establish Respondent received an OI of FAP and MA benefits and 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]