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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 28, 2017
MAHS Docket No.: [REDACTED] 17-006453
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. On [REDACTED] Respondent began receiving Food Assistance Program (FAP) benefits from the State of California.
2. Respondent continued receiving FAP benefits from the State of California through at least [REDACTED]

3. From [REDACTED], Respondent received FAP benefits from the State of Michigan totaling [REDACTED]
4. Respondent intentionally failed to report to MDHHS receipt of FAP benefits from California.
5. On [REDACTED], MDHHS requested a hearing to establish Respondent received an OI of [REDACTED] in FAP benefits from [REDACTED] due to an IPV justifying a 10-year disqualification.
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. 5-6) dated [REDACTED]. The unsigned document alleged Respondent received [REDACTED] in over-issued FAP benefits from [REDACTED]. 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 FAP expenditure history (Exhibit 1, pp. 39-40). Expenditures in Michigan were exclusively made from [REDACTED]. From [REDACTED], Respondent's expenditures occurred exclusively in California.

MDHHS presented Respondent's FAP issuance history (Exhibit 1, p. 41) from [REDACTED]. Monthly issuances totaling [REDACTED] from the alleged OI period were listed.

MDHHS presented a screen-dump with notes (presumably from a California FAP specialist) (Exhibit 1, p. 42). The notes indicated that Respondent received FAP benefits in California from [REDACTED]. MDHHS testimony indicated the document was sent by a State of California employee following a request of information from MDHHS.

MDHHS presented a Notice of Case Action (Exhibit 1, p. 43) concerning State of California-issued FAP benefits. The notice was dated [REDACTED]. The notice informed Respondent of an approval of FAP benefits of [REDACTED] for [REDACTED] and for [REDACTED] thereafter.

MDHHS established Respondent concurrently received FAP benefits from Michigan and California during the alleged OI period. Concurrent receipt of FAP benefits, by itself, sufficiently establishes an OI for the benefits issued by Michigan.

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 (or identity). MDHHS testimony did not allege that Respondent misreported Michigan residency. MDHHS testimony appeared to allege that Respondent failed to report a change in state of residency or receipt of out-of-state benefits. 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. 10-38). Respondent's electronic signature was dated [REDACTED]. Respondent answered "No" in response to the question, "Getting other FS Benefits?" (see Exhibit 1, p. 14). Respondent also answered "No" in response to the question, "Are you getting Food Assistance this month?" (see Exhibit 1, p. 12).

The presented reporting document contained boilerplate language stating the client's signature was certification, subject to perjury, that all reported information on the document was true. Presented evidence was not indicative that Respondent did not understand the reporting requirements.

In the OI analysis, it was established that Respondent received FAP benefits from the State of California on the date Respondent applied for FAP benefits in Michigan. Thus, Respondent's application included misreported information.

MDHHS has policy to address misreporting. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015), p. 8.

Presented evidence established that Respondent misreported information by reporting not receiving FAP benefits at a time she was receiving FAP benefits. Generally, a

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]