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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: September 13, 2017
MAHS Docket No.: 17-009404
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 September 11, 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 for the hearing.

ISSUES

1. The first issue is whether MDHHS established Respondent received an overissuance (OI) of benefits.
2. 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) and Medical Assistance (MA) benefits from the State of Michigan.
2. From [REDACTED], Respondent was not a Michigan resident.

3. From [REDACTED], Respondent received \$ [REDACTED] in FAP benefits.
4. From [REDACTED], Respondent received \$ [REDACTED] in MA benefits.
5. Respondent clearly and convincingly committed an IPV.
6. On [REDACTED], MDHHS requested a hearing to establish Respondent committed an IPV and received an OI of \$ [REDACTED] in FAP benefits and \$ [REDACTED] for the months from [REDACTED].

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 alleged Respondent received an overissuance of \$ [REDACTED] in FAP benefits from [REDACTED]. The repayment agreement, along with 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 three 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.

MDHHS presented TheWorkNumber.com (Exhibit 1, pp. 42-43) documents dated [REDACTED]. An address in Wisconsin was listed for Respondent and an employer. Respondent's stated hire date was [REDACTED]. A single gross pay dated [REDACTED], was listed.

MDHHS presented Respondent's CLEAR report (Exhibit 1, pp. 45-46). Various residential addresses in [REDACTED] were associated with the following dates: [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED]. The most recent date associated with a Michigan address was [REDACTED].

MDHHS presented Respondent's EBT expenditure history (Exhibit 1, pp. 26-38) from [REDACTED]. Expenditures exclusively in Michigan were listed through [REDACTED]. All expenditures beginning [REDACTED], occurred in [REDACTED] other than the following dates of expenditure (which occurred in Michigan): [REDACTED], and [REDACTED].

Consideration was given to finding that Respondent may have resided in Michigan while using an Electronic Benefit Transfer (EBT) card outside of Michigan because the states where Respondent's EBT card was used happened to be in close proximity to Michigan. This consideration was rejected based, in part, on Respondent's brief employment outside of Michigan.

Respondent's use of an EBT card outside of Michigan from [REDACTED] [REDACTED], sans one day in [REDACTED] and five days in [REDACTED], was highly indicative of non-Michigan residency. MDHHS further supported the allegation of Respondent's non-Michigan residency with documentation from the State of [REDACTED] and a [REDACTED] shelter.

MDHHS presented various documents from the State of [REDACTED] (Exhibit 1, pp. 47-56). FAP issuances to a female sharing Respondent's last name from [REDACTED] [REDACTED] were listed. One of the documents listed Respondent (along with a third person) which suggested that Respondent was a group member of the female's FAP-benefit case. Comments (see Exhibit 1, p. 51) indicated that the female reported on [REDACTED], that her husband (Respondent) moved into the house.

MDHHS presented a document from a Wisconsin shelter (Exhibit 1, p. 72). MDHHS testimony indicated the document was obtained as part of the IPV investigation against Respondent. The document listed periods from [REDACTED], and [REDACTED], as dates Respondent stayed at the shelter.

It is found that MDHHS established that Respondent was a non-Michigan resident from [REDACTED], (the first date of extended and repeated EBT usage outside of Michigan) through [REDACTED]. As a non-resident of Michigan, Respondent was not entitled to receive FAP benefits during the alleged OI period.

MDHHS presented Respondent's issuance history for FAP benefits (Exhibit 1, pp. 68-69). Issuances from [REDACTED] totaled \$ [REDACTED].

It is found that MDHHS established that Respondent received an OI of \$ [REDACTED] in FAP benefits during the OI period. The analysis will consider MDHHS' allegation of an OI of MA benefits.

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).

The presented Intentional Program Violation Repayment Agreement also alleged Respondent received an OI of MA benefits of \$ [REDACTED] from [REDACTED]. MDHHS policy concerning residency and OIs for MA benefits varies slightly from their policy for FAP 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 overissuances, 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.

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 an Expenditure Summary (Exhibit 1, pp. 70-71) for Respondent's MA benefits. A total cost of \$ [REDACTED] for Respondent's MA benefits from [REDACTED] was listed.

Respondent's benefit history from the State of [REDACTED] included a list of Respondent's MA eligibility (see Exhibit 1, pp. 54-56). Respondent's [REDACTED]-issued benefits included MA benefits from [REDACTED].

It was already found that Respondent was a non-Michigan resident as of [REDACTED], for purposes of FAP eligibility. The same finding and analysis applies to whether Respondent was a non-Michigan resident for purposed of MA eligibility.

Respondent's receipt of duplicate FAP and MA benefits for extended periods does not definitively verify that Respondent was at fault for receiving MA benefits from Michigan when he was not entitled to receive them. Generally, duplicate benefits is highly indicative of fault by the client.

Based on presented evidence, it is found that Respondent was at fault for receipt of MA benefits during a time of MA ineligibility due to non-Michigan residency. MDHHS established a cost of \$ [REDACTED] for Respondent's receipt of benefits. It is found that MDHHS established an OI of \$ [REDACTED] in MA 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 presented Respondent's FAP benefit application (Exhibit 1, pp. 11-39). Respondent's electronic signature was dated [REDACTED]. Respondent reported that he was homeless. Respondent reported a mailing address that MDHHS testimony described as a clubhouse for homeless persons, but not a location where persons could live or receive mail. 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.

MDHHS did not present verification of a written misreporting by Respondent. Generally, MDHHS will have difficulty in establishing a clear and convincing purposeful failure to report information when there is not verification of misreporting. The present case justifies exception to the general rule.

Presented evidence sufficiently verified that Respondent received FAP benefits from Michigan and Respondent's actual state of residence from [REDACTED]. Presented evidence also verified Respondent's receipt of MA benefits from multiple states from [REDACTED]. Receipt of duplicate benefits from multiple states is highly indicative of a fraudulent intent. Given Respondent's receipt of duplicate benefits, it is highly probable that Respondent intentionally failed to report non-Michigan residency to MDHHS.

It is found MDHHS clearly and convincingly established that Respondent committed an IPV. Accordingly, it is found MDHHS may proceed with disqualifying Respondent from benefit eligibility.


The standard disqualification period is used in all instances except when a court orders a different period. BAM 725 (January 2016), p. 16. [MDHHS is to] apply the following disqualification periods to recipients determined to have committed an IPV... one year for the first IPV... two years for the second IPV[, and] lifetime for the third IPV. *Id.*

MDHHS testimony conceded an IPV had not previously been imposed against Respondent. Thus, MDHHS is justified in imposing a one-year disqualification against Respondent.

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 ██████ in over-issued FAP benefits and \$ ██████ in MA benefits from ██████ due to an IPV. The MDHHS request to establish overissuances and a one-year disqualification against Respondent is **APPROVED**.

CG/jaf



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]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]