



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

Date Mailed: May 10, 2018  
MAHS Docket No.: 18-000446  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**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, 42 CFR 431.230(b), 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 April 26, 2018, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by Quocshawn Parker, regulation agent, with the Office of Inspector General. Respondent did not appear for the hearing.

**ISSUES**

The first issue is whether MDHHS established that Respondent received an overissuance (OI) of Food Assistance Program (FAP) and Medical Assistance (MA) benefits.

The second issue is whether MDHHS established by clear and convincing evidence 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 and her two children received ongoing FAP and MA benefits from the State of Michigan.
2. From August 30, 2016 through 1/18/17, Respondent exclusively spent Michigan-issued FAP benefits exclusively in Indiana other than purchases made on December 26, 2017, and December 27, 2017 (which were spent in Michigan). Exhibit A, pp. 47-51.

3. On November 18, 2016, Respondent applied for Medicaid from Indiana for her children. Respondent subsequently received Medicaid for her children for the benefit month of October 2016. Respondent's received Medicaid from Indiana beginning January 2017.
4. On January 4, 2017, Respondent applied for FAP benefits from Indiana. Respondent's application did not report that she received FAP benefits from Michigan. The State of Indiana subsequently approved Respondent for FAP benefits in January 2017.
5. Respondent received \$511 in FAP benefits from Michigan for December 2016 and January 2017.
6. Respondent received ongoing Medicaid for herself and two children in December 2016 and January 2017. The total cost for Medicaid for the two months was \$1,348.43. The cost of Respondent's Medicaid for December 2016 was \$408.
7. On January 4, 2018, MDHHS requested a hearing to establish that Respondent received an OI of \$1,022 in FAP benefits and \$1,348.43 in MA benefits for the period of December 2016 through January 2017. MDHHS also sought to impose a 10-year disqualification against Respondent based on Respondent's alleged IPV.
8. As of the date of hearing, Respondent had no previous IPV disqualifications.
9. Respondent was clearly and correctly instructed of reporting requirements.
10. During all relevant times, Respondent had no apparent impairment to understanding reporting requirements.

### **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. The Department (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).

The 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. The Department (formerly known as the Department of Human Services) 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' Hearing Summary and testimony alleged that Respondent received an OI of \$1,022 in FAP benefits and \$1,348.43 in MA benefits for the benefits months of December 2016 and January 2017. The basis of the OI was that Respondent received duplicate benefits from Michigan and another state. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 6-7) dated January 4, 2018, sent to Respondent as part of MDHHS' prehearing procedures.

[For all programs,] [w]hen a client group receives more benefits than it is entitled to receive... [MDHHS] must attempt to recoup the overissuance. BAM 700 (October 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 presented Respondent's State of Michigan application for MA benefits dated October 28, 2014. The application included boilerplate language informing clients to report changes to MDHHS within 10 days. Respondent reported a Michigan address. (Exhibit A, pp. 12-40.)

MDHHS presented Respondent's State of Indiana application for MA benefits dated November 18, 2016; MA coverage was requested for her two children. The application and MDHHS testimony indicated that the application was completed by a hospital representative on behalf of Respondent. An Indiana address for Respondent was listed. The application reported that Respondent was not currently enrolled in a health plan. The application also reported employment for an adult household member (Respondent was the only adult household member). (Exhibit A, pp. 52-80.)

MDHHS presented Respondent's State of Indiana application for FAP benefits dated January 4, 2017. Respondent's application reported a residential and mailing address in Indiana. Respondent reported that neither she nor her children were approved to receive food benefits that month. (Exhibit A, pp. 81-96.)

MDHHS presented Respondent's State of Michigan FAP-expenditure history from July 15, 2016, through January 18, 2017. From August 30, 2016, through January 18, 2017, all of Respondent's purchases were made in Indiana other than six purchases in Michigan on December 26, 2016, and December 27, 2016. (Exhibit A, pp. 47-51.)

### **FAP BENEFIT OVERISSUANCE**

MDHHS alleged that Respondent received an OI of FAP benefits for December 2016 and January 2017 due to concurrent receipt of FAP benefits from Indiana and Michigan. The total FAP benefit OI alleged by MDHHS was \$1,022.

For all programs, 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 (October 2016), p. 1. Benefit duplication is prohibited except for... FAP in limited circumstances [such as a resident of a domestic violence shelter]. *Id.* A person cannot receive FAP in more than one state for any month. *Id.*, p. 3.

MDHHS presented Respondent's FAP issuance history from the State of Michigan. Issuances to Respondent of \$511 per month for December 2016 and January 2017 were listed. (Exhibit A, p. 103.)

A document from Indiana's social services agency indicated that Respondent received FAP benefits in January 2017 through at least March 2017. (See Exhibit A, p. 97.)

Presented FAP issuance documents only verified that Respondent received FAP benefits from Indiana and Michigan in January 2017. The documents were consistent with MDHHS' Hearing Summary (Exhibit A, p. 1) and Investigation Report (Exhibit A, pp. 4-5) which also stated that Respondent only received FAP benefits from Michigan and Indiana in January 2017.

Based on the evidence, MDHHS failed to establish that Respondent received FAP benefits from multiple states in December 2016. MDHHS will be denied an OI of \$511 concerning the alleged OI from December 2016.

The evidence established that Respondent received FAP benefits from Indiana and Michigan in January 2017. Thus, MDHHS established an OI of \$511 for the benefits issued to Respondent in January 2017.

### **MA BENEFIT OVERISSUANCE**

MDHHS alleged that Respondent received an OI of MA benefits for December 2016 and January 2017 due to concurrent receipt of MA benefits from Indiana and Michigan. The total OI alleged by MDHHS was \$1,348.43.

For all programs, 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 (October 2016), p. 1. Benefit duplication is prohibited except for MA... in limited circumstances. *Id.* [For MA benefits,] [i]nitiate recoupment of an overissuance (OI) due to client error or intentional program violation (IPV), not when due to agency error... BAM 710 (October 2016), p. 1.

MDHHS presented various documents from Indiana's social services agency. The documents listed January 2017 as a starting month of MA coverage for Respondent. Respondent's children had starting MA months from August 2016 and ongoing coverage through at least January 2017. (Exhibit A, pp. 98-102.)

MDHHS presented Respondent's MA cost history to the State of Michigan. Medical coverage costs for Respondent and her two children from December 2016 and January 2017 totaled \$1,348.43. Respondent's costs for medical coverage in December 2016 totaled \$408. (Exhibit A, pp. 104-105.)

Again, MDHHS alleged benefit duplication for December 2016 when presented documents indicated otherwise. Presented documents did not verify that Respondent received medical coverage from Indiana until January 2017. Thus, MDHHS failed to establish an OI for the costs of medical coverage to Respondent for December 2016 (\$408).

MDHHS established that Respondent's children received duplicate medical coverage for December 2016 and January 2017. MDHHS also established that Respondent received duplicate medical coverage in January 2017. The total OI can be calculated by subtracting the non-duplicate costs for Respondent from December 2016 (\$408) from the total costs of medical coverage for December 2016 and January 2017 (\$1348.43). MDHHS is left with a potential OI of \$940.43... if MDHHS established a client error.

Respondent's applications to Indiana for FAP and MA each failed to report ongoing receipt of FAP or MA benefits from Michigan. Respondent's misreporting to Indiana was consistent with an alleged failure to report a change in residency to MDHHS.

Respondent's failure to report a change in residency is further supported by the length of time she received Michigan-issued FAP benefits while living in Indiana. Respondent's EBT expenditure history verified Respondent spent FAP benefits in Indiana for an approximately 4 ½ month period. The circumstances are indicative of a failure to report a change in residency and/or duplicate benefits.

The evidence sufficiently established that Respondent received duplicate MA benefits due to client error. It is found that MDHHS established an OI of \$940.43 in MA benefits. MDHSH further alleged that Respondent's OIs were caused by an IPV

### **INTENTIONAL PROGRAM VIOLATION**

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 alleged Respondent committed an IPV by purposely failing to report a change in Michigan residency and/or receipt of out-of-state FAP benefits. Either failure to report, if intentional, would support an IPV.

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.*

Receipt of benefits from another state happens to not be among the items listed in BAM 105 as a change required to be reported to MDHHS. Nevertheless, it is deemed to be such an obvious circumstance to report to MDHHS that it is interpreted as a change which is required to be reported.

Respondent's intent to defraud can be inferred from her reporting to Indiana. Respondent's applications for FAP and medical benefits failed to disclose her receipt of ongoing Medicaid and FAP benefits from Michigan. Respondent's misreporting to Indiana was indicative of a purposeful failure to report a change in residency or receipt of duplicate benefits to Michigan.

Boilerplate language on MDHHS applications informs clients to report changes within 10 days. The evidence established that Respondent was clearly and correctly instructed of reporting requirements. There was no evidence that Respondent had any impairment to understanding the reporting requirements.

It is found that MDHHS established that Respondent committed an IPV. MDHHS alleged that Respondent's IPV justifies a 10-year disqualification.

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 (such as a DHS-826, Request for Waiver of Disqualification Hearing, or DHS-830, Disqualification Consent Agreement) of having made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (October 2015), p. 1.

MDHHS alleged that Respondent failed to report out-of-state residency to Michigan during a time that Respondent received ongoing benefits from Michigan. A failure to update residency is not equivalent to fraudulently misreporting residency. A 10 year disqualification may be appropriate had Respondent misreported her residency on an application or other reporting document, though no such allegation was made. It is found MDHHS failed to establish a basis for a 10-year disqualification against Respondent. A standard IPV disqualification is justified.

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 did not allege Respondent had a history of IPV's. Thus, a one-year disqualification period is justified.

### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish a basis for a 10-year IPV disqualification period against Respondent. The MDHHS request to establish a 10-year IPV disqualification period is **DENIED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent committed an IPV justifying a standard IPV disqualification period of one year. The MDHHS request to establish an IPV disqualification is **PARTIALLY APPROVED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish that Respondent received OIs of \$511 in FAP

benefits and \$408 in MA benefits. The MDHHS request to establish an OI against Respondent is **PARTIALLY DENIED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent received an OI of \$511 in FAP benefits for January 2017 and an OI of \$940.43 in MA benefits for the period from December 2016 and January 2017. The MDHHS request to establish an OI against Respondent is **PARTIALLY APPROVED**.

CG/

**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]  
MDHHS-Wayne-49-Hearings

**Petitioner**

MDHHS-OIG-Hearings

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

[REDACTED]  
Policy Recoupment  
C Gardocki  
MAHS