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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] NC [REDACTED]

Date Mailed: June 14, 2018
MAHS Docket No.: 17-015162
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, 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 June 11, 2018, from Detroit, Michigan. The hearing was held at least 30 minutes after the scheduled time. The Michigan Department of Health and Human Services (MDHHS) was represented by Derrick Gentry, regulation agent, with the Office of Inspector General. Respondent did not appear for the hearing.

Consideration was given to adjourning or dismissing MDHHS' hearing request because the Notice of Hearing sent to Respondent was returned as undeliverable. Testimony from MDHHS indicated that the address used on the Notice of Hearing was Respondent's most currently listed address on a CLEAR report. As MDHHS appeared to use Respondent's best available address, the hearing proceeded pursuant to 7 CFR 273.16(e)(3)(i).

ISSUES

The first issue is whether MDHHS established that Respondent committed an intentional program violation (IPV) which justifies imposing an IPV disqualification against Respondent.

The second issue is whether MDHHS established that Respondent received an overissuance (OI) of benefits.

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 Food Assistance Program (FAP) benefit recipient.
2. From January 19, 2016, through February 27, 2016, Respondent exclusively spent FAP benefits in Michigan. (Exhibit A, pp. 17-18)
3. From March 3, 2016, through October 6, 2016, Respondent exclusively spent FAP benefits in North Carolina. (Exhibit A, pp. 18-24)
4. From May 2016 through September 2016, Respondent received \$[REDACTED] in FAP benefits.
5. On October 18, 2017, MDHHS requested a hearing to establish that Respondent received an OI of \$[REDACTED] in FAP benefits from May 2016 through September 2016 (hereinafter "OI period") as a result of unreported residency. MDHHS also requested a hearing to establish a one-year disqualification against Respondent. (Exhibit A, p. 1)

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' Hearing Summary and testimony alleged that Respondent received an OI of \$[REDACTED] in FAP benefits based on Respondent's non-Michigan residency. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 6-7) sent to Respondent as part of MDHHS' prehearing procedures.

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.

To be eligible for FAP or MA benefits, a person must be a Michigan resident. Bridges uses the requirements in the Residence section in this item to determine if a person is a Michigan resident. For purposes of FAP, 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. Eligible persons may include persons who entered the state with a job commitment or to seek employment; and students. BEM 220 (January 2016), p. 1.

To establish Respondent's non-Michigan residency during the OI period, Respondent presented Respondent's Electronic Benefit Transfer (EBT) expenditure history. Respondent's expenditure history verified that Respondent exclusively spent FAP benefits outside of Michigan from March 3, 2016, through October 6, 2016. Spending Michigan-issued benefits in North Carolina for a period of seven months is persuasive evidence of non-Michigan residency. Respondent did not appear for the hearing to present an alternative explanation for the benefit expenditures. Based on the evidence, it is found that Respondent was not a Michigan resident from March 3, 2016, through October 6, 2016.

As a non-Michigan resident from March 3, 2016, through October 6, 2016, Respondent was not entitled to receive FAP benefits during the alleged OI period. As MDHHS established that Respondent received \$[REDACTED] in FAP benefits during the OI period, MDHHS established that Respondent received an OI of \$[REDACTED] in FAP benefits. MDHHS further alleged that Respondent's OI was caused by an IPV.

[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.

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).

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (January 2015), p. 7. Changes in income and address must be reported within 10 days. *Id.*

In the OI analysis, MDHHS established that Respondent received an OI of FAP benefits due to Respondent's non-Michigan residency. Given the evidence, it is likely that the OI was caused by Respondent's failure to report changes in residency. To establish an IPV, MDHHS must also establish that Respondent's failure to report was intentional.

MDHHS did not present any documents verifying that MDHHS informed Respondent of the need to report changes within 10 days. This consideration supports rejecting that Respondent was aware of the need to report changes.

Even if Respondent was aware of the need to report changes, Respondent's apparent failure to update residency information could be reasonably explained by Respondent forgetting. Though reporting documents (e.g. applications) advise clients to report changes within 10 days, it does not ensure that a client would not accidentally forget. It is also possible that a client did not bother to read boilerplate language from reporting documents. This consideration supports rejecting that Respondent purposely failed to report a change in residency.

The FAP is administered by the State of Michigan from federal regulations. It is presumed that all states administer some form of FAP. Thus, it is presumed that the FAP benefits which Respondent received from Michigan could have been alternatively obtained from Respondent's actual state of residency. Respondent would have a financial motive to not report a change in residency in order to receive FAP benefits from multiple states; MDHHS acknowledged that Respondent did not concurrently receive FAP benefits from multiple states (see Exhibit A, pp. 25-26). Thus, Respondent appeared to have no direct financial motive in not reporting residency to MDHHS. An absence of financial motive to commit fraud supports rejecting a purposeful failure to report a change by Respondent.

Respondent's failure to report to MDHHS a change in residency is not found to be clearly and convincingly intentional. Thus, MDHHS failed to establish an IPV by Respondent.

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.*

Without an IPV, an IPV disqualification may not follow. Thus, MDHHS will be denied their request to establish 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 an overissuance of \$ [REDACTED] in FAP benefits from May 2016 through September 2016. The MDHHS request to establish an overissuance against Respondent 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 justifying a one-year period of disqualification. The MDHHS request to establish an IPV disqualification against Respondent is **DENIED**.

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) 763-0155; 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

LaClair Winbush
MDHHS-Wayne-31-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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