



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] AL [REDACTED] - [REDACTED]

Date Mailed: June 11, 2018
MAHS Docket No.: 17-016587
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 scheduled for May 24, 2018, from Detroit, Michigan. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled time. The Michigan Department of Health and Human Services (MDHHS) was represented by Allyson Carneal, 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 benefits.

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

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 September 11, 2015, Respondent submitted to MDHHS an application for FAP benefits. Boilerplate application language informed clients to report changes in income within 10 days. (Exhibit A, pp. 11-22)

2. From October 10, 2015, through May 12, 2016, Respondent spent FAP benefits only in Alabama (other than one purchase in North Carolina). (Exhibit A, pp. 23-31)
3. From December 2015 through May 2016, Respondent received monthly FAP benefits of \$ [REDACTED] (Exhibit A, p. 66)
4. From January 29, 2016, through March 25, 2016, Respondent received ongoing employment income from an employer (hereinafter "Employer1"). Respondent reported an Alabama residential address to Employer1. (Exhibit A, pp. 34-35)
5. On April 17, 2016, Respondent received employment income from an employer (hereinafter "Employer2"). Respondent reported an Alabama residential address to Employer2. Respondent received no other pays from Employer. (Exhibit A, pp. 32-33)
6. On April 18, 2016, Respondent signed a Redetermination which was subsequently submitted to MDHHS. Respondent reported no employment income and reported no indication of an Alabama address. (Exhibit A, pp. 36-41)
7. On October 12, 2016, Respondent submitted to MDHHS an application for FAP benefits. Boilerplate application language informed clients to report changes in income within 10 days. (Exhibit A, pp. 42-63)
8. From January 14, 2017, through May 17, 2017, Respondent spent FAP benefits only in Alabama and Indiana other than Michigan purchases made from January 25, 2017, through February 5, 2017. (Exhibit A, pp. 23-31)
9. On May 10, 2017, Respondent requested case closure based on a move to Alabama. (Exhibit A, p. 64)
10. For May 2017, Respondent received \$ [REDACTED] in FAP benefits. (Exhibit A, p. 68)
11. On November 20, 2017, MDHHS requested a hearing to establish an IPV disqualification of one year based on Respondent's alleged failure to report employment income. MDHHS also requested a hearing to establish OIs of \$ [REDACTED] for the period of December 2015 through May 2016 and \$ [REDACTED] for May 2017.
12. As of the date of hearing, Respondent had no known previous IPV disqualifications.

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 residency. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 5-6) dated November 20, 2017, 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.

MDHHS presented Respondent's Electronic Benefit Transfer (EBT) expenditure history (Exhibit A, pp. 23-31). The history verified that all of Respondent's EBT expenditures from October 10, 2015, through May 12, 2016, occurred in Alabama (other than one purchase in North Carolina). Respondent's EBT purchases from January 14, 2017, through May 17, 2017 verified that Respondent only used her EBT card in Alabama and Indiana other than Michigan purchases made from January 25, 2017, through February 5, 2017.

MDHHS also presented employment information for two different jobs held by Respondent in 2016 (Exhibit A, pp. 32-35). For both of Respondent's jobs, Respondent reported an Alabama address to her employer.

Respondent's use of her EBT card and reported employment information were persuasive in establishing Respondent was not a Michigan resident during the alleged OI period. Respondent did not appear to present evidence suggesting she maintained

Michigan residency during the alleged OI period. Based on the evidence, it is found that MDHHS established that Respondent was not a Michigan resident in May 2017 and during the period from December 2015 through May 2016. As a non-Michigan, Respondent was not entitled to receive FAP benefits from Michigan.

MDHHS presented Respondent's FAP issuance history from Michigan (Exhibit A, pp. 66 and 68). For all months from December 2015 through May 2016, and May 2017, Respondent received \$[REDACTED] in FAP benefits. As Respondent was not entitled to receive FAP benefits during those months because she was not a Michigan resident, it is found that Respondent received an OI totaling \$[REDACTED] in FAP benefits. MDHHS further alleged that the OI was caused by an IPV by Respondent.

[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).

MDHHS alleged that Respondent intentionally misreported and/or failed to report residency information. To support the allegation, MDHHS presented Respondent's Redetermination dated April 18, 2016, which was mailed to Respondent's reported Michigan address. Respondent returned the Redetermination to MDHHS with no mention of her Alabama residency. Notably, Respondent returned the Redetermination to MDHHS in the midst of a seven-month period when she exclusively spent EBT benefits outside of Michigan.

Additionally, Respondent also had two jobs during the OI period. The evidence suggested that Respondent did not report either job to MDHHS (though one of Respondent's jobs resulted in only one pay check. Respondent's failure to report her

employment is consistent with an intent to receive benefits that Respondent was not entitled to receive.

Boilerplate language on MDHHS applications states that the client's signature is certification, subject to perjury, that all reported information on the document was true. The language is consistent with MDHHS policy which states that clients must completely and truthfully answer all questions on forms and in interviews (see BAM 105 (October 2016), p. 8). The evidence was not indicative that Respondent did not or could not understand the clear and correct reporting requirements.

The evidence established that Respondent misreported and/or intentionally failed to not report non-Michigan residency and employment. Respondent's misreporting directly led to an OI of benefits. Generally, a client's misreporting of an OI which results in an OI is clear and convincing evidence of an IPV. Respondent presented no evidence to rebut the generality.

It is found MDHHS clearly and convincingly established that Respondent committed an IPV. Accordingly, 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 did not allege Respondent previously committed an IPV. 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 established that Respondent committed an IPV based on receipt of FAP benefits of \$█████ from December 2015 through May 2016 and \$█████ for May 2017. The MDHHS requests to establish an overissuance and a disqualification period of one year against Respondent are **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) 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

Carisa Drake
MDHHS-Calhoun-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
[REDACTED]
[REDACTED] AL [REDACTED]

M Shumaker
Policy Recoupment
C Gardocki
MAHS