



RICK SNYDER
GOVERNOR

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

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DIRECTOR

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Date Mailed: June 12, 2018
MAHS Docket No.: 17-016644
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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 6, 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 Valerie Lancour, 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 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. On November 3, 2016, Respondent submitted to MDHHS an application for Food Assistance Program (FAP) benefits. Boilerplate application language stated that clients are to report changes, including income, to MDHHS within 10 days. (Exhibit A, pp. 11-41)

2. On November 4, 2016, MDHHS approved Respondent's FAP application and mailed a Notice of Case Action informing Respondent of the approval. Boilerplate language on the notice (and a Change Report mailed with the notice) states that clients are to report changes, including income, to MDHHS within 10 days. (Exhibit A, pp. 42-48)
3. From January 11, 2017, through April 14, 2017, Respondent received ongoing employment income from an employer (hereinafter "Employer"). Respondent reported a Colorado residential address to Employer. (Exhibit A, pp. 55-56)
4. From April 7, 2017, through September 23, 2017, Respondent exclusively spent Michigan-issued FAP benefits in Massachusetts. (Exhibit A, pp. 49-51)
5. From December 2016 through September 2017, Respondent received \$[REDACTED]/month in FAP benefits. (Exhibit A, pp. 55-56)
6. On November 30, 2017, MDHHS requested a hearing to establish that Respondent received an OI of \$[REDACTED] in FAP benefits from March 2017 through September 2017 (hereinafter "OI period") as a result of unreported residency and/or employment income. MDHHS also requested a hearing to establish a one-year disqualification against Respondent. (Exhibit A, p. 1)
7. As of the date of hearing, Respondent had no known history of IPV's (Exhibit A, pp. 64-65)

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 and/or unbudgeted employment income. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 5-6) 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.

Respondent's EBT expenditure history (Exhibit A, pp. 49-51) verified that all of Respondent's EBT expenditures from April 7, 2017, through September 23, 2017, occurred in Massachusetts. Respondent also reported a non-Michigan residential address to Employer for a job that Respondent held from January 2017 to April 2017. The evidence was consistent with non-Michigan residency during the alleged OI period.

Consideration was given to whether Respondent could have conceivably worked and/or used his EBT card outside of Michigan while still living in Michigan. Given the proximity between Michigan and Massachusetts and Michigan and Colorado, it is highly improbable that Respondent lived in Michigan during the alleged OI period. Further, Respondent presented no evidence of Michigan residency during the alleged OI period. It is found that MDHHS established that Respondent was not a Michigan resident during the alleged OI period.

MDHHS presented a history of Respondent's FAP issuances (Exhibit A, pp. 58-59). Respondent received \$ [REDACTED] during the alleged OI period.

As a non-Michigan resident, Respondent was not entitled to receive all FAP benefits issued during the alleged OI period. Thus, MDHHS established an OI of \$ [REDACTED] against Respondent. 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).

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 and/or employment. To establish an IPV, MDHHS must also establish that Respondent's failure to report was intentional.

MDHHS presented Respondent's application and notice of benefit approval which included boilerplate language informing clients to report to MDHHS changes of income and/or address within 10 days. MDHHS alleged that the documents established that Respondent knew of the reporting requirements, and therefore, intentionally failed to report his residency and/or employment change to MDHHS.

Respondent's apparent failure to update residency information could reasonably be explained by Respondent forgetting to report information. Though reporting documents 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 despite warnings to do so. This consideration is made to show there is a reasonably possible scenario in which Respondent did not purposely fail to report residency and/or employment.

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; DHHS made no such allegation. Thus, Respondent appeared to have no direct financial motive in not reporting residency to MDHHS. This consideration supports rejecting that Respondent purposely failed to report a residency change to MDHHS.

It is notable that there is no known rule or regulation stopping Respondent from spending Michigan-issued benefits outside of Michigan. MDHHS was aware of

Respondent's non-Michigan expenditures but, given the evidence, did not interfere with them.

Respondent's failure to report to MDHHS a change in residency, by itself was not clearly and convincingly intentional. Notably, Respondent also allegedly failed to report employment income to MDHHS. MDHHS verified a 3-month period of employment for Respondent. Respondent's failure to report employment is more insightful to establishing an IPV because employment income would have likely resulted in reduced FAP benefits no matter which state issued FAP benefits to Respondent. A failure to report employment income is a persuasive motive to purposely not report information to MDHHS.

Respondent's failure to report employment and a change in residency to MDHHS was established to be clearly and convincingly intentional. Thus, MDHHS established that Respondent committed an IPV.


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 received a total overissuance of \$ [REDACTED] in FAP benefits from March 2017 through September 2017 due to an IPV. The MDHHS request to establish an overissuance and a one-year disqualification against Respondent is **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

Kimberly Myers
MDHHS-Marquette-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
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[REDACTED] MA [REDACTED]

M Shumaker
Policy Recoupment
C Gardocki
MAHS