



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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Date Mailed: June 25, 2018  
MAHS Docket No.: 17-016738  
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 scheduled for June 6, 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 Jason Rupp, regulation agent, with the Office of Inspector General. Respondent did not appear for the hearing.

**ISSUE**

The 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 May 16, 2013, Respondent submitted to MDHHS an application for Food Assistance Program (FAP) benefits. Boilerplate application language stated that clients are to report to MDHHS changes affecting their benefits within 10 days. (Exhibit A, pp. 11-40)

2. From November 13, 2013, through January 13, 2014, Respondent exclusively spent FAP benefits in Michigan. (Exhibit A, p. 53)
3. From February 13, 2014, through June 16, 2014, Respondent exclusively spent FAP benefits in Ohio. (Exhibit A, pp. 53-54)
4. On February 28, 2014, Respondent received his only pay check from an employer. (Exhibit A, pp. 55-56)
5. From April 2014 through June 2014, Respondent received \$[REDACTED]/month in FAP benefits from the State of Michigan.
6. On September 16, 2018, Respondent applied for FAP benefits from Ohio. Respondent continued to receive FAP benefits from Ohio through October 2015. (Exhibit A, pp. 57-59)
7. On September 24, 2014, Respondent submitted to MDHHS an application for FAP benefits. Respondent's application reported a Michigan residential address. (Exhibit A, pp. 41-52)
8. In September 2014 and October 2014, Respondent received \$[REDACTED] and \$[REDACTED] respectively, in FAP benefits from the State of Michigan. (Exhibit A, p. 60)
9. On December 5, 2017, MDHHS requested a hearing to establish a \$798 OI against Respondent for benefits issued to Respondent in April 2014 through June 2014, and September 2014 through October 2014. MDHHS also requested a hearing to impose a 10-year disqualification period against Respondent.
10. On June 6, 2018, during an administrative hearing, MDHHS withdrew its request to establish an OI.

### **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 an OI of \$[REDACTED] against Respondent. During the hearing, MDHHS testimony acknowledged that the OI was previously established and that an administrative hearing to establish an OI was unnecessary.

MDHHS' hearing request will be dismissed concerning establishing an OI based on MDHHS' withdrawal of their hearing request.

MDHHS also requested a hearing to establish a 10-year disqualification against Respondent. MDHHS alleged that Respondent failed to report and/or misreported non-Michigan residency for the purpose of obtaining FAP benefits from multiple states. 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.

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 (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 such an obvious circumstance to report to MDHHS that it is interpreted as a change which is required to be reported.

To be eligible for FAP 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.

From February 13, 2014, through June 16, 2014, Respondent exclusively spent FAP benefits in Ohio. This evidence is consistent with finding that Respondent had Ohio residency February 13, 2014, through June 16, 2014

Given the close proximity between Michigan and Ohio, consideration was given to whether Respondent maintained Michigan residency during the period he spent FAP benefits exclusively in Ohio. Such consideration was rejected, in part, based on Respondent's reporting to an employer that his residence was in Ohio. It is found that Respondent was a non-Michigan resident from February 13, 2014, through June 16, 2014.

For the period from April 2014 through June 2014, the basis for OI was non-Michigan residency. It is notable that the FAP is administered by the State of Michigan from federal regulations and that all states provide some form of FAP benefits. It is presumed that the FAP benefits which Respondent received from Michigan could have been obtained from Respondent's actual state of residency. Respondent would have a financial motive to not report a change in residency to receive FAP benefits from multiple states; DHHS made no such allegation for the period from April 2014 through August 2014. This consideration supports rejecting that Respondent purposely failed to report a residency change to MDHHS.

Consideration was given to finding that Respondent had a financial motive to not report non-Michigan residency because he was employed outside of Michigan during a time he received FAP benefits from Michigan. This consideration is based on the assumption that clients who work outside of Michigan believe that the State of Michigan will have more trouble detecting unreported employment income. Respondent's non-Michigan employment consisted of one pay from February 2014. A single pay from employment would not result in any change in Respondent's FAP eligibility (see BEM 505). Thus, Respondent's non-Michigan employment income is not supportive in finding that Respondent intentionally failed to not report employment or residency. A later OI period established a more persuasive basis for Respondent to intentionally fail to report non-Michigan residency.

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.

Respondent received FAP benefits from Ohio and Michigan in September 2014 and October 2014. Respondent's duplicate receipt of FAP benefits is consistent with an intent to defraud.

The evidence established that Respondent applied for FAP benefits in Ohio on September 16, 2014, and then applied for FAP benefits in Michigan eight days later. Given the evidence, it is possible that Respondent resided in Ohio, applied for FAP benefits in Ohio, and eight days later applied for FAP benefits from Michigan using a fraudulent Michigan address. Under such a scenario, a 10-year IPV disqualification is appropriate.<sup>1</sup> The present case's circumstances merit further consideration.

Generally, clients who intentionally misreport addresses for the purpose of receiving duplicate benefits from multiple states would do so with an intent to receive duplicate FAP benefits for several months. Respondent happened to only receive duplicate FAP benefits for one full month and a partial month in September 2014. The evidence did not establish why Respondent's benefits stopped. This consideration supports that Respondent did not intentionally misreport residency.

As of September 24, 2014 (Respondent's State of Michigan application date), Respondent had applied for FAP benefits from Ohio eight days earlier. It is also known that Respondent continued to receive FAP benefits from Ohio for several months, but from Michigan only for the following month. If Respondent accurately reported Michigan residency on September 24, 2014, he would have had to switch state residency at least twice (from Ohio to Michigan and back to Ohio). Such a scenario is unusual, but it is not clear and convincing evidence of a purposely misreported address.

Given the evidence, it is not clear and convincing that Respondent intentionally misreported residency for the purpose of obtaining duplicate FAP benefits. It is further found that MDHHS did not establish a basis for any other 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 disqualification against Respondent.

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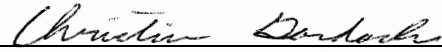
<sup>1</sup> A person is disqualified for a period of 10 years if found guilty through the administrative hearing process of having made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (October 2015), p. 1.

**DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS withdrew their request to establish an overissuance. Concerning establishing an OI, MDHHS' hearing request is **DISMISSED**.

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 ten-year period of disqualification. The MDHHS request to establish an IPV disqualification against Respondent is **DENIED**.

CG/

  
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**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**

Kathleen Verdoni  
MDHHS-Saginaw-Hearings

**Petitioner**

MDHHS-OIG-Hearings

**Respondent**

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