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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] OH [REDACTED]

Date Mailed: June 28, 2018
MAHS Docket No.: 18-004147
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 June 11, 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 Derrick Gentry, 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 14, 2016, Respondent electronically submitted to MDHHS an application for Food Assistance Program (FAP) benefits. Respondent reported a Michigan mailing address and homelessness. Boilerplate application

language stated that clients are to report changes in income and address within 10 days. (Exhibit A, pp. 14-41)

2. From September 20, 2016, through January 21, 2017, Respondent used his Electronic Benefit Transfer (EBT) card exclusively in Ohio. (Exhibit A, pp. 101-109)
3. On October 15, 2016, a Facebook post under an account name matching Respondent's birth name posted, "From the 313 to the 513..." Subsequent posts by the Facebook account holder referenced a move to ██████████ Ohio. (Exhibit A, p. 110)
4. On October 21, 2016, Respondent electronically submitted to MDHHS an application for Medical Assistance (MA) benefits. Respondent reported a Michigan mailing address and homelessness. Boilerplate language stated that clients are to report changes in income and address within 10 days. (Exhibit A, pp. 42-66)
5. From November 2016 through December 2016, Respondent received \$ ██████ in FAP benefits. (Exhibit A, p. 117)
6. From November 2016 through January 2017, Respondent received at least \$ ██████ in MA benefits. (Exhibit A, pp. 119-121)
7. On March 19, 2017, Respondent electronically submitted to MDHHS an application for FAP benefits. Respondent reported a Michigan address.
8. From March 20, 2017, through December 15, 2017, Respondent spent FAP benefits exclusively in Michigan. (Exhibit A, pp. 104-109)
9. From March 2017 through February 2018, Respondent received \$ ██████ in FAP benefits. (Exhibit A, pp. 96-98)
10. On April 26, 2018, MDHHS requested a hearing against Respondent to establish an IPV disqualification of one year based on Respondent's alleged misreporting and/or failure to report non-Michigan residency. MDHHS also requested a hearing to establish Ols of \$ ██████ in FAP benefits for November 2016 through December 2016, \$ ██████ in FAP benefits for March 2017 through February 2018, and \$ ██████ in MA benefits for November 2016 through January 2017. (Exhibit A, p. 1)
11. 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).

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 \$ [REDACTED] in total over-issued FAP benefits (\$582 for November 2016 to December 2016 and \$ [REDACTED] from March 2017 to February 2018). MDHHS also alleged that Respondent received \$ [REDACTED] in over-issued MA benefits from November 2016 through January 2017. 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. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. Recoupment is a MDHHS action to identify and recover a benefit overissuance. BAM 700 (January 2016), pp. 1-2.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes in income must be reported within 10 days of receiving the first payment reflecting the change. BAM 105 (January 2015), p. 7.

To be eligible for FAP or MA benefits, a person must be a Michigan resident. BEM 220 (January 2016), p. 1. Bridges uses the requirements in the Residence section in this item to determine if a person is a Michigan resident. *Id.*

Alleged FAP OI of \$ [REDACTED] for November 2016 and December 2016

For purposes of FAP benefits, 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. *Id.* Eligible persons may include persons who entered the state with a job commitment or to seek employment; and students. *Id.*

Respondent's apparent Facebook post on October 15, 2016, that he went from the "313 to the 513" (an apparent reference to [REDACTED] and [REDACTED] area codes) was consistent with Respondent moving from Detroit to Ohio as of October 15, 2016. Respondent's apparent Facebook post was also consistent with non-Michigan residency at least as of October 2016.

Respondent's EBT expenditure history verified that Respondent exclusively spent Michigan-issued FAP benefits in Ohio from September 20, 2016, through January 21, 2017. Spending FAP benefits exclusively outside of Michigan for a period of approximately four months is consistent with non-Michigan residency for those months. The evidence established that Respondent was not a Michigan resident from September 20, 2016, through January 21, 2017.

Respondent's issuance history verified that Respondent received a total of \$[REDACTED]/month in FAP benefits for November 2016 and December 2016. As a non-Michigan resident during the alleged OI period, Respondent was not entitled to receive any FAP benefits from Michigan. Thus, MDHHS established an OI of \$[REDACTED] for the period for November 2016 and December 2016.

MDHHS alleged that Respondent received an OI of \$[REDACTED] for the period from November 2016 and December 2016. Perhaps MDHHS intended to consider the \$[REDACTED] received by Petitioner in January 2017 as part of the alleged OI; however, this was not alleged in MDHHS' Hearing Summary. Based on the evidence, MDHHS did not establish a basis for \$[REDACTED] in FAP benefits for the period from November 2016 to December 2016.

Alleged MA OI of \$[REDACTED] for November 2016 through January 2017

For purposes of MA, residency is based on circumstances for the calendar month being evaluated and certified. *Id.* For purposes of MA, a Michigan resident is an individual who is living in Michigan except for a temporary absence. *Id.* Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished. *Id.*

It was already found that Respondent was not a Michigan resident for the period from September 20, 2016, through January 21, 2017, based on Respondent's Facebook post and exclusive use of his EBT card outside of Michigan. The same evidence supports finding that Respondent was not a Michigan resident during the alleged OI period concerning MA benefits.

For MA benefits, MDHHS can pursue recoupment of an OI due to client error or IPV. BAM 710 (October 2015) p. 1. Thus, to establish an OI of MA benefits, MDHHS must establish Respondent's non-Michigan residency and that Respondent was at fault for continued Michigan MA eligibility during a period of non-residency.

Respondent's application for MA benefits dated October 21, 2016, reported Michigan residency. At the time, Respondent had already posted on Facebook that he went from the "313 to the 513". Respondent was also approximately one month into exclusive use of EBT benefit spending outside of Michigan. Respondent's reported Michigan residency at a time he had Ohio residency was consistent with Respondent being at fault for MA benefits issued during his period of non-residency.

Respondent's MA history verified that Respondent received at least \$ [REDACTED] in MA benefits from November 2016 through January 2017. Given the evidence, MDHHS established an OI of \$ [REDACTED] against Respondent for the period from November 2016 through January 2017

Alleged FAP OI of \$ [REDACTED] for March 2017 through February 2018

MDHHS also alleged an OI of FAP benefits from March 2017 through February 2018 based on Respondent's non-Michigan residency. Respondent's EBT expenditure history from March 2017 through February 2018 verified exclusive spending in Michigan. The evidence was consistent that Respondent was a Michigan resident during the alleged OI period.

Based on the evidence, MDHHS failed to establish that Respondent was a non-Michigan resident from March 2017 through February 2018. Without non-Michigan residency, an OI cannot be established based on non-Michigan residency. Thus, MDHHS did not establish an OI of \$ [REDACTED] in FAP benefits from March 2017 through February 2018.

Alleged Intentional Program Violation

[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).

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 Michigan residency on his application dated October 21, 2015. Respondent's misreporting directly led to an OI of MA benefits. Generally, a client's misreporting which results in an OI is clear and convincing evidence of an IPV. The present case justifies exception to the general rule.

MDHHS acknowledged that Respondent did not receive medical or FAP benefits concurrently from multiple states. Without concurrent receipt of benefits, Respondent would have no apparent financial motivation to intentionally misreport information to MDHHS. Presumably, whatever food and medical benefits that Respondent received in Michigan could have been received by Respondent in his actual state of residence. Without a financial motivation to defraud, Respondent appears to lack any reason to purposefully misreport residency.

Based on the evidence, it is found that MDHHS failed to clearly and convincingly establish that Respondent intentionally misreported and/or failed to report residency. 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 a finding that a client committed an IPV, an IPV disqualification cannot follow. Thus, MDHHS will be denied the 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 the following OIs of benefits:

- \$ [REDACTED] in MA benefits from November 2016 through January 2017; and
- \$ [REDACTED] in FAP benefits from November 2016 and December 2016

The MDHHS requests to establish an overissuance against Respondent are **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 the following OIs of benefits:

- \$ [REDACTED] in FAP benefits from November 2016 and December 2016; and
- \$ [REDACTED] in FAP benefits from March 2017 through February 2018.

The MDHHS requests to establish an overissuance against Respondent are **PARTIALLY DENIED**.

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

[REDACTED]
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[REDACTED] OH [REDACTED]

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