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GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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Date Mailed: July 3, 2018  
MAHS Docket No.: 18-000388  
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 28, 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 Julie Price, 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 Food Assistance Program (FAP) and Medical Assistance (MA) benefits.

The second issue is whether MDHHS established by clear and convincing evidence that Respondent committed an intentional program violation (IPV).

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. As of April 2015, Respondent was an ongoing recipient of Food Assistance Program (FAP) benefits. (Exhibit A, pp. 10-15)

2. On January 5, 2016, an MDHHS staff person sent an email concerning benefits received by Respondent from the State of Wisconsin. Correspondence from the State of Wisconsin indicated that Respondent received ongoing FAP benefits from Wisconsin since November 2015. (Exhibit A, pp. 16-18)
3. From November 2015 through January 2016, Respondent received \$█/month in FAP benefits from the State of Michigan. (Exhibit A, p. 19)
4. From June 1, 2015, through November 26, 2015, Respondent exclusively spent FAP benefits in the State of Wisconsin. (Exhibit A, pp. 19-21)
5. On January 5, 2018, MDHHS requested a hearing to establish that Respondent received an OI of \$█ in FAP benefits from November 2015 through January 2016. MDHHS also sought to impose a 10-year IPV disqualification against Respondent. (Exhibit A, p. 1)
6. As of the date of hearing, Respondent had no previous IPV disqualifications.
7. MDHHS clearly and correctly instructed Respondent of reporting requirements.
8. During all relevant times, Respondent had no apparent impairment to understanding reporting requirements.

### **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. The Department (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 \$█ in FAP benefits based on concurrently issued FAP benefits. 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. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. Recoupment is an MDHHS action to identify and recover a benefit overissuance. BAM 700 (January 2016), pp. 1-2.

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. Benefit

duplication is prohibited except for FAP in limited circumstances (such as a residency in a domestic violence shelter). *Id.* A person cannot receive FAP in more than one state for any month. BEM 222 (October 2016), pp. 1-3.

Respondent's FAP issuance history from the State of Michigan verified that Respondent received FAP benefits from November 2015 through January 2016 totaling \$[REDACTED]. Correspondence from the State of Wisconsin verified that Respondent also received FAP benefits from Wisconsin during the alleged OI period. The evidence established that Respondent received duplicate benefits from November 2015 through January 2016, and therefore, Respondent was not eligible to receive the \$[REDACTED] in FAP benefits from the OI period. Thus, MDHHS established an OI of \$[REDACTED] in FAP benefits against 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; see also 7 CFR 273(e)(6).

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. Non-income changes must be reported within 10 days after the client is aware of them. *Id.*, p. 12.

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 and basic circumstance to report to MDHHS that it is interpreted as a change which must be reported.

A regulation agent testified that Respondent's receipt of duplicate benefits was not learned through Respondent's reporting. The regulation agent also testified that Respondent's case file showed no evidence of reporting of Wisconsin-issued benefits

by Respondent. The testimony was not verified, but Respondent did not appear for the hearing to claim otherwise.

Boilerplate language on MDHHS applications and Notices of Case Actions informs clients to report changes within 10 days. MDHHS did not present such documentation; however, as a benefit recipient, it is presumed that Respondent received multiple notices of her reporting requirements. The evidence established that Respondent was clearly and correctly instructed of reporting requirements. There was no evidence that Respondent had any impairment to understanding the reporting requirements.

Based on the evidence, it is found that Respondent intentionally failed to report duplicate receipt of benefits. Thus, MDHHS established that Respondent committed an IPV. MDHHS alleged that Respondent's IPV justifies a 10-year disqualification.

A person is disqualified for a period of 10 years if found guilty through the administrative hearing process, convicted in court or by signing a repayment and disqualification agreement (such as a DHS-826, Request for Waiver of Disqualification Hearing, or DHS-830, Disqualification Consent Agreement) 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.

MDHHS alleged that Respondent failed to report duplicate receipt of FAP benefits during a time that Respondent received ongoing benefits from Michigan. A failure to update residency is not equivalent to fraudulently misreporting residency. A 10-year disqualification may be appropriate had Respondent misreported residency on an application or other reporting document, though no such allegation was made. MDHHS failed to establish a basis for a 10-year disqualification against Respondent. Under the circumstances, a standard IPV disqualification is appropriate.

The standard disqualification period is used in all instances except when a court orders a different period. 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 for life for the third IPV. *Id.* BAM 725 (January 2016), p. 16.

MDHHS did not allege Respondent had a history of IPV's. 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 failed to establish a basis for a 10-year IPV disqualification period against Respondent. It is further found that MDHHS established that Respondent committed an IPV justifying a standard IPV disqualification period of one year. The MDHHS request to establish an IPV disqualification is **PARTIALLY APPROVED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent received an OI of \$ [REDACTED] in FAP benefits from November 2015 through January 2016. The MDHHS request to establish an OI 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**

Julie M Booms  
MDHHS-Huron-Hearings

**Petitioner**

MDHHS-OIG-Hearings

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED] WI [REDACTED]

M Shumaker  
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