



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: July 24, 2018
MAHS Docket No.: 18-001797
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 July 23, 2018, from Detroit, Michigan. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled hearing time. The Michigan Department of Health and Human Services (MDHHS) was represented by Thomas Lilienthal, 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 by clear and convincing evidence that Respondent committed an intentional program violation (IPV) which justifies imposing a 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 October 28, 2016, Respondent submitted to MDHHS a signed application for Food Assistance Program (FAP) benefits. Boilerplate language stated that signing the application was certification that an informational booklet was read

(which informs clients to report changes to MDHHS within 10 days). (Exhibit A, pp. 11-53)

2. On February 6, 2018, MDHHS received an email from an employee of the state of Ohio. The email stated that Respondent was an active FAP benefit recipient in Ohio. Attached documents listed Respondent as a FAP recipient from September 2015 through October 2016 and again from January 25, 2017, through May 2017. (Exhibit A, pp. 54-61)
3. From October 2016 through May 2017, Respondent received the following FAP benefits from the State of Michigan: \$█ for October 2016, \$█/month for November 2016 and December 2016, and \$█/month from January 2017 through May 2017. (Exhibit A, p. 69)
4. On February 26, 2018, MDHHS requested a hearing to establish that Respondent received an OI of \$█ in FAP benefits from October 2016 and January 2017 through May 2017 and to establish an IPV disqualification of 10 years against Respondent. (Exhibit A, p. 1)
5. As of July 23, 2018, Respondent's FAP issuance for May 2017 was expunged. As a result, MDHHS verbally amended their request to establish against Respondent an OI of \$█ from October 2016 and January 2017 through April 2017.
6. As of the date of hearing, Respondent had no known previous IPV disqualifications.
7. During all relevant times, Respondent had no apparent impairment to understanding or fulfilling 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. 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 \$█ in FAP benefits based on Respondent's duplicate receipt of FAP benefits. 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.

During the hearing, MDHHS stated that Respondent's \$ [REDACTED] issuance for May 2017 was expunged (in other words, Respondent did not spend the benefits, and the State of Michigan deleted them from Respondent's account). As a result of the expungement, MDHHS amended the amount of OI sought to \$ [REDACTED] and the OI period to October 2016 and January 2017 through April 2017. MDHHS' hearing request will be dismissed concerning the alleged OI of \$ [REDACTED] to Respondent for May 2017.

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 \$ [REDACTED] in FAP benefits from October 2016 and January 2017 through April 2017. Email correspondence from the State of Ohio verified that Respondent also received FAP benefits from the State of Ohio from October 2016 through April 2017 (but not in November 2016 or December 2016). Thus, Respondent received duplicate benefits for October 2016 and January 2017 through April 2017; therefore, Respondent was not eligible to receive the \$ [REDACTED] in FAP benefits from the OI period and MDHHS established that respondent received an OI of \$ [REDACTED] in FAP benefits. MDHHS alleged the OI was caused by Respondent's IPV.

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.

BAM 105 lists various items which must be reported, though the list is stated not to be exhaustive. Receipt of benefits from another state is not among the items listed in BAM 105 as a change required to be reported to MDHHS. Though receipt of FAP benefits from another state is not specifically listed in BAM 105, it is such an obvious and basic circumstance that affects benefit eligibility that it is found to be a change which must be reported to MDHHS.

Boilerplate language on MDHHS applications informs clients to report changes within 10 days. Respondent's application signature established Respondent's awareness of the reporting requirement. There was no evidence that Respondent had any impairment to understanding the clear and correct reporting requirements.

Respondent's failure to report duplicate receipt of FAP benefits resulted in an OI of \$█ the amount of the OI is motivation for Respondent to intentionally not report receipt of FAP benefits from Ohio. The OI occurred over a period of 5 months; the period of OI is ample enough that Respondent did not likely forget to report to MDHHS receipt of out-of-state benefits.

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 contended that Respondent's duplicate receipt of FAP benefits, by itself, establishes a basis for a 10-year disqualification. The MDHHS contention is not persuasive as MDHHS policy unequivocally requires that a client make a fraudulent statement concerning identity or residency before a 10-year disqualification is imposed.

Respondent failed to report duplicate receipt of FAP benefits during a time he received FAP benefits from two states. A failure to report duplicate receipt of benefits is not a fraudulent statement of residency.

Respondent's FAP benefit expenditure history (Exhibit A, pp. 62-67) listed that Respondent exclusively spent Michigan-issued FAP benefits in Michigan from November 12, 2016, through November 22, 2016, and December 16, 2016, through February 21, 2017. Respondent exclusively spent FAP benefits in Ohio from November 25, 2016, through December 11, 2016, and March 5, 2017, through May 12, 2017. MDHHS contended that Respondent's expenditures verify that Respondent was an Ohio resident for at least a portion of the OI period, and Respondent's failure to update his address with the State of Michigan serves as a fraudulent statement of residency. A failure to update residency is not equivalent to fraudulently misreporting residency. A 10-year disqualification may be appropriate had Respondent misreported residency, though no such allegation was made. Without evidence of Respondent making a fraudulent statement of residency, it is found that 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 withdrew their request to establish a \$█ OI against Respondent for May 2017. MDHHS' request to establish an OI for May 2017 is **DISMISSED**.

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. The MDHHS request to establish a 10-year IPV disqualification is **DENIED**.

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 October 2016 and January 2017 through April 2017. It is further found that MDHHS established a basis for a 1-year disqualification period against Respondent. The MDHHS requests to establish an \$ [REDACTED] OI and 1-year disqualification 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

Kimberly Kilmer
MDHHS-Mecosta/Osceola-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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

M Shumaker
Policy Recoupment
C Gardocki
MAHS