



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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██████████ IN ██████████

Date Mailed: August 7, 2018  
MAHS Docket No.: 18-002495  
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 August 2, 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 Kelli Owens, 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 22, 2012, Respondent submitted to MDHHS an application for Food Assistance Program (FAP) benefits. Boilerplate language stated that the

client's signature is certification that an information booklet was read (which includes information that clients are to report changes to MDHHS within 10 days). (Exhibit A, pp. 12-25)

2. From May 13, 2014, through June 15, 2014, Respondent spent Michigan-issued FAP benefits in Indiana. (Exhibit A, pp. 76-97)
3. From July 13, 2014, through September 19, 2014, Respondent spent Michigan-issued FAP benefits in Michigan (other than on August 13, 2014, and August 15, 2014). (Exhibit A, pp. 76-97)
4. From September 19, 2014, through December 22, 2016, Respondent spent FAP benefits exclusively in Indiana. (Exhibit A, pp. 76-97)
5. On February 3, 2015, Respondent submitted a Redetermination to MDHHS concerning continuing Medicaid eligibility. Respondent did not report any change from a Michigan address. (Exhibit A, pp. 37-42)
6. On April 27, 2015, Respondent established utility service for an Indiana address. (Exhibit A, pp. 109-125)
7. On July 2, 2015, Respondent submitted to MDHHS an electronic application for Food Assistance Program (FAP) benefits. Boilerplate language stated that the client's signature is certification, subject to penalties of perjury, that all provided information was accurate. Respondent's reported address was in Michigan. (Exhibit A, pp. 26-36)
8. On May 7, 2016, Respondent submitted to MDHHS an electronic application for Food Assistance Program (FAP) benefits. Boilerplate language stated that the client's signature is certification that an information booklet was read (which includes information that clients are to report changes to MDHHS within 10 days). (Exhibit A, pp. 43-70). An IP location history listed that Respondent sent her application from the State of Indiana. (Exhibit A, p. 75)
9. On June 15, 2016, following an inquiry to the State of Indiana, MDHHS received electronic correspondence that Respondent received FAP benefits from the State of Indiana in April 2015 and May 2015. (Exhibit A, pp. 71-74)
10. From January 13, 2017, through August 29, 2017, Respondent spent FAP benefits exclusively in Michigan. (Exhibit A, pp. 76-97)
11. From September 13, 2017, through December 5, 2017, Respondent spent FAP benefits in Indiana. (Exhibit A, pp. 76-97)

12. As of October 13, 2017, Respondent's reported address to a former employer was in Indiana. Respondent's pay dates were from May 6, 2014, through June 24, 2014; February 10, 2015, through June 18, 2015; and additional weeks in August 2015 through November 2015. (Exhibit A, pp. 98-100)
13. From April 2015 through June 2016, Respondent received \$[REDACTED] in FAP benefits from the State of Michigan. (Exhibit A, pp. 104-105)
14. From April 2015 through June 2016, Respondent received MA benefits from the State of Michigan. The MA cost to Michigan was \$[REDACTED] (Exhibit A, pp. 106-108)
15. On March 16, 2018, MDHHS requested a hearing to establish that Respondent received an OI of \$[REDACTED] in FAP benefits and \$[REDACTED] in MA benefits from April 2015 through June 2016. MDHHS also requested a hearing to establish an IPV disqualification of 10 years against Respondent. (Exhibit A, pp. 1-2)
16. As of the date of hearing, Respondent had no previous IPV disqualifications.
17. 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).

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 OIs of \$[REDACTED] in FAP benefits and \$[REDACTED] in MA benefits from April 2015 through June 2016 based on Respondent's non-Michigan residency and/or Respondent's duplicate receipt of 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.

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. 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.

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.*

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.

MDHHS presented Respondent's Electronic Benefit Transfer (EBT) expenditure history which verified that Respondent spent Michigan-issued FAP benefits exclusively in Indiana from September 19, 2014, through December 22, 2016. To use EBT benefits in Indiana for a period of over two years is compelling evidence that Respondent was not a Michigan resident during the period. Evidence of Respondent's work history and utility history further bolstered that Respondent was an Indiana resident during the OI period. Given the evidence, it is found that Respondent was not a Michigan resident from April 2015 through June 2016

MDHHS presented Respondent's electronic application dated May 7, 2016. MDHHS discovered that Respondent submitted the application from a computer in Indiana. MDHHS also established that the application was submitted to Michigan in the midst of Respondent's extended period of exclusively spending FAP benefits in Indiana. The evidence was indicative that Respondent misrepresented her residency in the

application dated May 7, 2016. Respondent's misrepresentation appeared to not lead to benefit issuances after June 2016 only because MDHHS became suspicious that Respondent reported inaccurate residency (as evidenced by the inquiry to Indiana on June 15, 2016). Respondent's misrepresentation on her application does not definitively establish that Respondent is at fault for the earlier benefit issuances but it is highly consistent with failing to report to Michigan updated residency information. Given the evidence, it is found that Respondent was at fault for receiving MA benefits from Michigan while residing outside of Michigan.

As a non-Michigan resident who was at fault for not reporting updated residency to MDHHS, Respondent is responsible for the OIs of benefits. It is found that MDHHS established that Respondent received OIs of \$[REDACTED] in FAP benefits and \$[REDACTED] in MA benefits from April 2015 through June 2016. There is no need to consider a benefit OI based on duplicate receipt of benefits as an OI was established solely because of non-Michigan residency. MDHHS further alleged that Respondent's OI was caused by an 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).

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.

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.

Respondent's benefit history from Michigan and Indiana established that Respondent received duplicate FAP benefits in April 2015 and May 2015. Duplicate receipt of benefits is a financial motive to not report either non-Michigan residency and/or receipt of FAP benefits from another state. Respondent's misreporting of Michigan residency on her application dated May 7, 2016, was consistent with an intent to misreport information for the purpose of receiving benefits to which she was not entitled to receive. Given the evidence, 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 established that Respondent made a fraudulent statement of residency on her application dated May 7, 2016. Though Respondent misreported her residency, she did not receive duplicate FAP benefits as a result of her misreporting. Respondent received duplicate FAP benefits in April 2015 and May 2015, but MDHHS did not provide evidence of a corresponding fraudulent statement regarding residency. Respondent may have intentionally failed to report residency but this does not equate to a fraudulent statement of residency.

Given the evidence, MDHHS failed to justify imposing a 10-year disqualification against Respondent. Respondent's intentional failure to report residency justifies imposing a standard IPV disqualification.

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 lifetime for the third IPV. BAM 725 (January 2016), p. 16.

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 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 committed an IPV based on receipt of \$[REDACTED] in FAP benefits and \$[REDACTED] in MA benefits from April 2015 through June 2016. The MDHHS requests to establish an overissuance and a disqualification period of one year 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**

Clarence Collins  
MDHHS-Wayne-55-Hearings

**Petitioner**

MDHHS-OIG-Hearings

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED] IN [REDACTED]

M Shumaker  
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