



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: September 18, 2018
MAHS Docket No.: 18-003556
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 August 20, 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 Lillie Dennard, 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 December 5, 2015, Respondent electronically submitted to MDHHS an application for Food Assistance Program (FAP) and Medical Assistance (MA) benefits. Respondent reported a Michigan address. Boilerplate application

language stated that signing the application was certification that a Rights and Responsibilities section was read; one of the stated responsibilities was that clients are to report changes, such as income and address, to MDHHS within 10 days. (Exhibit A, pp. 11-39)

2. On January 9, 2016, Respondent spent FAP benefits in Michigan. (Exhibit A, pp. 69-72)
3. From February 5, 2016, through June 9, 2016, Respondent exclusively spent FAP benefits in Florida. (Exhibit A, pp. 69-72)
4. From March 10, 2016, through June 30, 2016, Respondent received ongoing employment income from an employer (hereinafter, "Employer"). (Exhibit A, pp. 77-78)
5. From July 2, 2016, through August 13, 2016, Respondent exclusively spent FAP benefits in Michigan. (Exhibit A, pp. 69-72)
6. As of August 22, 2016, Respondent's last reported address with Employer was a Florida address. (Exhibit A, pp. 77-78)
7. From April 2016 through June 2016, Respondent received MA benefits which cost the State of Michigan \$[REDACTED]/month. (Exhibit A, p. 84)
8. From April 2016 through June 2016, Respondent received \$[REDACTED]/month in FAP benefits. (Exhibit A, pp. 81-83)
9. On March 30, 2018, MDHHS requested a hearing to establish that Respondent received OIs of \$[REDACTED] in FAP benefits and \$[REDACTED] in MA benefits from April 2016 through June 2016 (hereinafter "OI period") as a result of unreported out-of-state residency. MDHHS also requested a hearing to establish a one-year disqualification against Respondent. (Exhibit A, p. 1)
10. As of the date of hearing, Respondent had no known history of IPV's.

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 OIs of \$[REDACTED] in FAP benefits and \$[REDACTED] in MA benefits from April 2016 through June 2016 based on Respondent's non-Michigan residency. 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. BAM 700 (January 2016), p. 1. An overissuance is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. *Id.* Recoupment is a MDHHS action to identify and recover a benefit overissuance. *Id.*, p. 2.

To be eligible for FAP or MA benefits, a person must be a Michigan resident. BEM 220 (April 2018) p. 1. Bridges uses the requirements in the Residence section to determine if a person is a Michigan resident. *Id.*

Respondent's EBT expenditures verified that all of Respondent's EBT expenditures from February 5, 2016, through June 9, 2016, occurred in Florida. Respondent also reported a non-Michigan residence to her employer for a period of employment from March 10, 2016, through June 30, 2016. Given the long distance between Michigan and Florida, it is likely that Respondent lived in Florida from February 5, 2016, to June 30, 2016.

Alleged FAP OI

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.*

MDHHS policy is fairly vague on what defines residency. A person must be "living" in Michigan. Residency includes persons who live in Michigan temporarily, though a person on vacation is not deemed a resident. MDHHS policy does not make clear whether a person temporarily living outside of Michigan remains a Michigan resident during their absence from Michigan.

Federal regulations require persons to apply for benefits in the state which they are living.¹ Federal regulations also prohibit persons from receiving duplicate benefits.² Neither Respondent applying for benefits while residing outside of Michigan nor receiving duplicate benefits were alleged against Respondent.

Federal regulations do not appear to prohibit clients from receiving benefits from Michigan while being physically in another state. This appearance is consistent with Michigan's

¹ 7 CFR 273.3(a)

² See 7 CFR 272.4(e)

allowance of Bridge card usage outside the State of Michigan. Not finding an OI based on residency is consistent with SNAP being a federal program that reasonably does not seek to penalize clients who receive FAP from one state while temporarily living in another state.

The evidence also established that Respondent likely worked in Florida during the alleged OI period. Respondent may have received an OI of FAP benefits based on unbudgeted employment income, however, MDHHS did not calculate an OI based on this possibility. Thus, consideration of an OI based on unbudgeted and/or unreported employment income will not be undertaken.

Given the evidence and corresponding federal regulations, the evidence did not establish an OI based on residency. Thus, MDHHS is denied their request to establish recoupment of \$ [REDACTED] in FAP benefits.

Alleged MA OI

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.*

As noted in the above analysis, the evidence established that Respondent likely worked and lived outside of Michigan from February 2016 to June 2016. Respondent appeared to return to Michigan on July 2, 2018, based on continued and exclusive FAP expenditures within Michigan. MDHHS policy allows individuals to maintain Michigan residency while temporarily absent from Michigan “when the purpose of the absence has been accomplished”. It is not known if Respondent left for Florida solely for employment, though Respondent’s employment in Florida was sandwiched by FAP usage in Michigan.

Given the evidence, Respondent’s absence from Michigan from February 2016 to June 2016 is temporary. Given Respondent’s temporary absence from Michigan, it cannot be found that Respondent was not a Michigan resident during the alleged OI period. Without Respondent’s non-Michigan residency, the alleged OI of \$ [REDACTED] for MA benefits cannot be established.

Alleged 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. 1.³

IPV is suspected when there is **clear and convincing** 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).

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. 16.⁴

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.

MDHHS seeks to impose a disqualification period based on Respondent's alleged failure to report non-Michigan residency. In the OI analysis, it was found that MDHHS failed to establish that Respondent received an OI of benefits. Without an OI based on residency, a corresponding IPV disqualification cannot follow.

Consideration was given to establishing an IPV based on Respondent's alleged failure to report employment income. The evidence suggested that Respondent received FAP and/or MA benefits based on employment income which was not factored. For purposes of this decision, it will be assumed that Respondent failed to report employment income to MDHHS. It is plausible that Respondent intentionally failed to report employment income; however, an IPV disqualification for failing to report employment income cannot follow as MDHHS failed to calculate that an OI based on unreported employment income occurred.

³ See also 7 CFR 253.8 for the corresponding federal regulations.

⁴ See also 7 CFR 253.8 (b) for the corresponding federal regulations.

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 recoupment for \$[REDACTED] in FAP benefits and \$[REDACTED] in MA benefits from April 2016 through June 2016. MDHHS further failed to establish a basis to impose a one-year IPV disqualification against Respondent. The MDHHS requests to establish an overissuance and a disqualification period against Respondent are **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

Kelly Sutherland
MDHHS-Livingston-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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