



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
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[REDACTED] IL [REDACTED]

Date Mailed: August 7, 2018  
MAHS Docket No.: 18-004287  
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 held on August 2, 2018, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by James Linaras, regulation agent with the Office of Inspector General. Respondent appeared and was unrepresented.

**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 May 10, 2016, MDHHS received Respondent's signed application for FAP benefits. Boilerplate language stated that Respondent's signature was certification that an informational booklet was read (which states that clients are to report changes to MDHHS within 10 days). (Exhibit A, pp. 16-35)
2. From May 12, 2016, through May 17, 2016, Respondent exclusively spent FAP benefits in Michigan. (Exhibit A, pp. 11-15)
3. From May 18, 2016, through January 29, 2017, Respondent exclusively spent FAP benefits in Michigan, other than two days in December 2016. (Exhibit A, pp. 11-15)
4. From July 2016 through January 2017, Respondent received a total of \$ [REDACTED] in FAP benefits. (Exhibit A, p. 36)

5. From August 2016 through January [REDACTED] Respondent received MA benefits with capitation and claim costs totaling \$ [REDACTED] (Exhibit A, pp. 37-39)
6. On April 19, 2018, MDHHS requested a hearing to establish that Respondent received OIs of \$ [REDACTED] in FAP benefits from July 2016 through January 2017 and \$ [REDACTED] in MA benefits from August 2016 through January 2017. MDHHS also requested a hearing to establish a one-year disqualification against Respondent. (Exhibit A, p. 1)

### **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 \$ [REDACTED] in over-issued FAP benefits from March 2017 to February 2018 and \$ [REDACTED] in over-issued MA benefits from August 2016 through January 2017. The basis of the OIs was unreported residency by Respondent. 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.

To establish Respondent's non-Michigan residency during the OI period, MDHHS presented Respondent's Electronic Benefit Transfer (EBT) expenditure history. Respondent's expenditure history verified that Respondent spent FAP benefits in Illinois beginning in May 2016 and continuing through January 2017 (other than two days in December 2016 in which Respondent spent benefits in Michigan). Respondent's nearly-exclusive expenditure of FAP benefits in Illinois during the alleged OI period was persuasive evidence that Respondent did not reside in Michigan during the alleged OI period. Given the evidence, it is found that Respondent was not a Michigan resident from May 2016 through January 2017.

Respondent testimony conceded he was an Illinois resident throughout the alleged OI period. He further conceded that he negligently failed to report non-Michigan residency to MDHHS. Given the evidence, Respondent is at fault for receiving continued FAP and MA benefits during the alleged OI period.

As a non-Michigan resident who was at fault for not reporting updated residency to MDHHS, Respondent is responsible for the OIs of benefits. The evidence established that Respondent's failure to update his state residency with MDHSH resulted in OIs of \$[REDACTED] in FAP benefits from July 2016 through January 2017 and \$[REDACTED] in MA benefits from August 2016 through January 2017. MDHHS further alleged that Respondent's OIs were 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).

In the OI analysis, MDHHS established that Respondent received OIs of FAP and MA benefits due to Respondent's failure to report non-Michigan residency. To establish an IPV, MDHHS must also establish that Respondent's failure to report was intentional.

Respondent testified he may have negligently failed to update MDHHS with his residency, but he did not fail to report residency with an intent to commit fraud. Respondent's testimony was credible and consistent with his lack of windfall in not reporting a residency change to MDHHS.

The FAP and Medicaid are administered by the State of Michigan from federal regulations. It is presumed that all states administer some form of FAP and Medicaid. Thus, Respondent's FAP and MA eligibility from Michigan renders Respondent to have been likely eligible for the same or similar benefits from the State of Illinois. Because Respondent would have been likely eligible for the same benefits from another state, he appeared to have financial motive to not report his state of residency.

Respondent would have a financial motive to not report a change in residency in order to receive FAP benefits from multiple states; MDHHS made no such allegation. Respondent would seem to have no financial motive in not updating residency with MDHHS. An absence of financial motive to commit fraud supports rejecting a purposeful failure to report a change by Respondent.

Respondent's failure to report to MDHHS a change in residency is not found to be clearly and convincingly intentional. 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 an IPV, an IPV disqualification may not follow. Thus, MDHHS will be denied their 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 Ols of \$[REDACTED] in FAP benefits from July 2016 through January 2017 and \$[REDACTED] in MA benefits from August 2016 through January 2017. The MDHHS request to establish overissuances against Respondent is **APPROVED**.

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

**Petitioner**

MDHHS-OIG-Hearings

**DHHS**

Tara Roland 82-17  
MDHHS-Wayne-17-Hearings

**Respondent**

[REDACTED]  
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[REDACTED] IL [REDACTED]

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