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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: November 29, 2018
MAHS Docket No.: 18-007212
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION FOR
INTENTIONAL PROGRAM VIOLATION AND RECIPIENT CLAIM**

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 November 1, 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 Derrick Gentry, regulation agent with the Office of Inspector General. Respondent did not appear for the hearing.

ISSUES

The first issue is whether MDHHS established a recipient claim of Food Assistance Program (FAP) and an overissuance of Medical Assistance (MA) benefits against Respondent.

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 January 26, 2016, Respondent electronically submitted to MDHHS an application for FAP and MA benefits. Respondent reported a residential

Michigan address. Boilerplate application language stated that clients are to report changes, such as income and address to MDHHS within 10 days. (Exhibit A, pp. 12-49.)

2. From February 5, 2016, through March 14, 2016, Respondent exclusively spent FAP benefits in Michigan. (Exhibit A, p. 50.)
3. On March 31, 2016, Respondent had an unspecified utility connected at a Virginia address. (Exhibit A, p. 57.)
4. From April 12, 2016, through August 8, 2016, Respondent exclusively spent FAP benefits in Virginia. (Exhibit A, pp. 50-53.)
5. From June 23, 2017, to July 7, 2017, Respondent worked for an employer. Respondent's most recently reported residential address with the employer was in Virginia. (Exhibit A, pp. 64-66.)
6. At no relevant time did Respondent receive concurrent FAP or MA benefits from multiple states. (Exhibit A, pp. 62-63.)
7. From April 2016 through July 2016, Respondent received MA benefits which cost the State of Michigan at least \$815.11/month. (Exhibit A, pp. 67-69.)
8. From May 2016 through July 2016, Respondent received FAP benefits of \$[REDACTED] month. (Exhibit A, p. 70.)
9. On July 10, 2018, MDHHS requested a hearing to establish a recipient claim of \$[REDACTED] in FAP benefits and \$[REDACTED] in MA benefits from May 2016 through July 2016. MDHHS also requested a hearing to establish a one-year disqualification against Respondent. (Exhibit A, pp. 1-2.)

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

Alleged FAP recipient claim

Federal regulations refer to FAP overissuances as "recipient claims" and mandate states to collect them. 7 CFR 273.18(a). The types of recipient claims are those caused by agency error, unintentional recipient claims, and IPV. 7 CFR 273.18(b).

MDHHS alleged that Respondent received FAP benefits during a time of non-Michigan residency. MDHHS further alleged that Respondent failed to report a change in residency after moving to Virginia, which caused the benefit overissuance.

Certified change reporting households are required to report changes in residency and address. 7 CFR 273.12(a)(1)(iii). State agencies have discretion to mandate reporting changes within 10 days after the household is aware of the change or within 10 days after the end of the month. 7 CFR 273.12(a)(2). MDHHS policy provides that clients must report changes in address within 10 days after being aware of the change. BAM 105 (January 2018), p. 12. Given federal and MDHHS regulations, Respondent had an obligation to report any change in address and/or residency within 10 days.

MDHHS policy states that a person must be a Michigan resident to be eligible for FAP benefits. BEM 220 (April 2018), p. 1. 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.* Based on federal regulations and MDHHS policy, MDHHS may pursue a recipient claim against Respondent if Respondent was not a Michigan resident and failed to report a change in residency during the alleged overissuance period.

MDHHS presented a CLEAR report which listed various information concerning Respondent. The report stated that Respondent connected a utility service at a Virginia address on March 31, 2016. Connecting a utility service in Virginia is consistent with non-Michigan residency.

MDHHS presented Respondent's Electronic Benefit Transfer transaction history (EBT) which listed that Respondent's EBT card was last used in Michigan on March 14, 2016,

and used continuously in Virginia from April 12, 2016, through August 8, 2016. The evidence was consistent with Respondent being a Virginia resident as of March 31, 2016.

MDHHS also presented worknumber.com information concerning Respondent's employment. The information indicated that Respondent last received a pay on July 7, 2017, and that Respondent's last reported address was in Virginia. The information was only marginally insightful because where Respondent lived as of July 2017 is not particularly insightful as to where Respondent lived one year earlier.

No known regulation prevents Respondent from spending Michigan-issued FAP benefits outside of Michigan; however, Respondent's expenditures outside of Michigan is indicative of non-Michigan residency. When factored, with Respondent's utility service in Virginia, MDHHS established Respondent was a non-Michigan resident as of March 31, 2016, and throughout the overissuance period.

To determine the first month of client-caused overissuances, MDHHS allows time for reporting changes, the full time to process changes, and the full negative action period. BAM 715 (January 2016), p. 5. Clients have 10 days to report changes (see BAM 105), MDHHS has 10 days to process changes (see BAM 220), and negative actions do not become effective until at least 12 days after processing (see BAM 220). Thus, a recipient claim cannot begin until after 32 days after March 31, 2016, (the date when Respondent lost Michigan residency. Applying the 32-day period results in a change effective date in May 2016. A May 2016 effective date cannot affect a client's FAP eligibility until June 2016. Thus, June 2016 is the first month in which MDHHS can establish a recipient claim for non-residency.

Respondent's FAP issuance history listed FAP issuances to Respondent of \$[REDACTED] month from May 2016 through July 2016. MDHHS is not entitled to a recipient claim for May 2016; thus, MDHHS will be denied \$[REDACTED] of their claim. MDHHS did establish Respondent's non-Michigan residency which would have affected Respondent's FAP eligibility for June 2016 and July 2016; thus, MDHHS established a recipient claim of \$[REDACTED] for the benefits received by Respondent in June 2016 and July 2016.

Alleged MA overissuance

MDHHS alleged that Respondent was ineligible to receive MA benefits during the OI period due to Respondent's non-Michigan residency. The evaluation requires consideration of how MDHHS defines residency concerning MA eligibility

MDHHS policy states that a person must be a Michigan resident to be eligible for MA benefits. BEM 220 (April 2018), p. 1. For purposes of MA, residency is based on circumstances for the calendar month being evaluated and certified. BEM 220 (April 2018), p. 1. 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 considered in the FAP recipient claim analysis, Respondent was a Virginia resident as of March 31, 2016. No evidence suggested that Respondent was in Michigan or planned on returning to Michigan during the OI period. Given the evidence, Respondent was not a Michigan resident for purposes of MA eligibility as of March 31, 2016.

MDHHS may establish an overissuance of MA benefits for IPV or client error, but not for agency error. BAM 710 (October 2015), p. 1. For unreported changes, the overissuance period begins the first day of the month after the month in which the standard reporting period plus the negative action period would have ended. *Id*. Generally, MA overissuances are the amount of MA payments made by MDHHS.¹

Respondent was not a resident of Michigan as of March 31, 2016. Applying the 10-day period to report and 12-day negative-action period results in a change effective date in April 2016. The first day of the month after April 2016 would be May 2016. Thus, May 2016 is the first month an overissuance period can be established.

MDHHS presented Respondent's benefit issuance history which listed monthly MA costs of at least \$ [REDACTED] MDHHS alleged an overissuance based on a monthly cost of \$ [REDACTED] and this amount will be accepted as the monthly cost of MA benefits. The evidence established an OI period from May 2016 through July 2016. At a cost of \$ [REDACTED] month, MDHHS established a total OI of \$ [REDACTED]

Alleged IPV

MDHHS claimed both FAP and MA overissuances were caused by an IPV. An IPV shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards. 7 CFR 273.16(c).

An IPV requires clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an IPV. 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence must be strong enough to cause a clear and firm belief that the proposition is true; it is more than proving that the proposition is probably true. 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).

¹ Exceptions to the generality are for clients with Medicaid deductibles or long-term care. Neither circumstance is applicable to the present case.

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. 7 CFR 253.8 (b) and BAM 725 (January 2016), p. 16.

It has already been found that Respondent received an OI of FAP and MA benefits due to non-Michigan residency. MDHHS alleged that Respondent failed to report updated residency information. For purposes of this decision, the MDHHS allegation will be accepted as true. For an IPV, MDHHS must establish that Respondent purposely failed to report updated residency in order to receive an OI of FAP benefits.

Typically, clients have no financial incentive to misrepresent state residency unless the client receives duplicate benefits (i.e., benefits from multiple states). MDHHS acknowledged that Respondent did not receive duplicate benefits.

States have some discretion in their FAP policies and requirements. For example, some states have work requirements and others do not. Thus, Respondent may have had incentive to not report residency. Such a possibility is purely speculative and not supported by any evidence.

MDHHS did not present verification of a written misreporting by Respondent. Generally, MDHHS will have difficulty in establishing a client's purposeful failure to report information without evidence of a written misreporting; the evidence was not persuasive in overcoming the generality.

Based on the evidence, MDHHS did not clearly and convincingly establish that Respondent intentionally failed to report updated residency. Thus, it is found that Respondent did not commit an IPV.

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. 7 CFR 253.8 (b) and BAM 725 (January 2016), p. 16.

Without a finding that a client committed an IPV, an IPV disqualification cannot 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 failed to establish that Respondent committed an IPV justifying a one-year period of disqualification. The MDHHS request to establish an IPV disqualification is **DENIED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish a \$█ recipient claim in FAP benefits against Respondent. The MDHHS request to establish a recipient claim against Respondent is **PARTIALLY DENIED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent received OIs of \$█ in FAP benefits and \$█ in MA benefits. The MDHHS request to establish overissuances against Respondent are **PARTIALLY 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

LaClair Winbush
MDHHS-Wayne 31-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
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[REDACTED] MI [REDACTED]

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