



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

██████████
████████████████████
██████ OH ██████

Date Mailed: October 1, 2018
MAHS Docket No.: 18-007558
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 September 5, 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 Dawn O'Dell, 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 June 6, 2016, Respondent purchased a home in ██████ OH. Respondent's home ownership continued through 2017. (Exhibit A, pp. 47-48)

2. On November 29, 2016, Respondent was hired to work for an [REDACTED] employer. (Exhibit A, pp. 41-42). Employment records as of May 30, 2017, stated that Respondent had an address in [REDACTED] OH.
3. On December 16, 2016, Respondent electronically submitted to MDHHS an application for Food Assistance Program (FAP) benefits. Respondent reported an address in [REDACTED] Michigan. 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. Boilerplate language also stated that the client's signature was certification, subject to penalties of perjury, that all reported information was true. (Exhibit A, pp. 12-39)
4. On December 19, 2016, a MDHHS specialist documented that Respondent reported that she lives in [REDACTED] with an older woman who allows Respondent to stay at the residence. (Exhibit A, p. 40)
5. From December 2016 through June 2017, Respondent received a total of \$[REDACTED] in FAP benefits from the State of Michigan based on a group size of one person. (Exhibit A, p. 49)
6. From January 1, 2017, through June 17, 2017, Respondent spent Michigan-issued FAP benefit exclusively in Ohio. (Exhibit A, pp. 50-51)
7. On August 2, 2018, MDHHS requested a hearing to establish that Respondent received an OI of \$[REDACTED] in FAP benefits from December 2016 through June 2017 as a result of unreported out-of-state residency. MDHHS also requested a hearing to establish a one-year disqualification against Respondent. (Exhibit A, pp. 1-2)
8. As of the date of hearing, Respondent had no known history of IPV's.
9. Respondent has no known disability which limits her reporting responsibilities. (Exhibit A, p. 53)

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 \$[REDACTED] in FAP benefits from December 2016 through June 2017 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), p. 1. An overissuance is the amount of benefits issued to the client group 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 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.* 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.* Federal regulations require that clients apply for FAP benefits in the state in which they reside.¹

MDHHS presented documents verifying Respondent's ownership of a single-family residence in [REDACTED] OH as of June 2016. The documents verified that Respondent's ownership continued through 2017. Thus, Respondent was the owner of an Ohio home when she applied for FAP benefits from Michigan in December 2016. Respondent's application for FAP benefits did not report residency in the Ohio home. It is theoretically possible that Respondent lived in Michigan despite ownership of a home outside of Michigan. In such a case, Respondent would be expected to report an Ohio house as an asset; notably, Respondent did not report her Ohio home as an asset. Respondent's Ohio home ownership and failure to report her ownership is consistent with Ohio residency as of her application date.

MDHHS also presented Respondent's EBT expenditure history From January 2017 through June 2017. All of Respondent's FAP expenditures occurred in Ohio. This evidence does not verify that Respondent's application from December 2016 inaccurately represented Michigan residency, but is also consistent with Ohio residency in December 2016.

MDHHS presented Respondent's employment records which verified that Respondent reported an Ohio address to her employer. The employment documents were from May 2017 and did not definitively establish that Respondent reported an Ohio address to her employer in December 2016; the documents were consistent with such a conclusion and no evidence suggested otherwise.

¹ 7 CFR 273.3(a)

The evidence established that Respondent was an Ohio resident when she applied for FAP benefits. The evidence further established Respondent's continued non-Michigan residency throughout the OI period. As a non-resident, Respondent was not eligible to receive any Michigan-issued FAP benefits from the OI period. Thus, MDHHS established a basis for recoupment of \$1,264 in FAP benefits. MDHHS further alleged that the 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. 1.²

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 evidence established that Respondent's application dated December 16, 2016, misreported Michigan residency at a time when Respondent was not a Michigan resident. For an IPV to be established, MDHHS must also clearly and convincingly establish that Respondent intentionally misreported residency.

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.

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

² See also 7 CFR 253.8 for the corresponding federal regulations.

Respondent's employment records suggested that Respondent worked and lived in Ohio during the period she received FAP benefits in Michigan. Respondent's application dated December 16, 2016, did not report any employment income. As a result, Respondent enjoyed receiving the maximum FAP benefit issuance for her group size throughout the OI period.³ Given Respondent's failure to report employment, Respondent may have sought FAP benefits from Michigan to prevent her employment income from being factored in her FAP eligibility. This consideration supports a purposeful intent to misreport residency.

Boilerplate language on MDHHS reporting documents states that the client's signature is certification, subject to perjury, that all reported information on the document was true. The language is consistent with MDHHS policy which states that clients must completely and truthfully answer all questions on forms and in interviews (see BAM 105 (October 2016), p. 8). The evidence was not indicative that Respondent did not or could not understand the clear and correct reporting requirements.

The evidence established that Respondent failed to report, in writing, residency and employment income. Respondent's misreporting directly led to an OI of benefits. Generally, a client's written statement which contradicts known facts resulting in an OI is clear and convincing evidence of an intent to commit an IPV; evidence was not presented to rebut the generality.

It is found MDHHS clearly and convincingly established that Respondent committed an IPV. Accordingly, MDHHS may proceed with disqualifying Respondent from benefit eligibility.

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

MDHHS did not allege that Respondent previously committed an IPV. Thus, a one-year disqualification period is justified.

³ See RFT 260 for maximum FAP issuances.

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 established that Respondent committed an IPV based on receipt of \$ [REDACTED] in FAP benefits from December 2016 through June 2017. The MDHHS requests to establish an overissuance and a one-year disqualification period 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

Denise McCoggle
MDHHS-Wayne-15-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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

M Shumaker
Policy Recoupment
C Gardocki
MAHS