



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED] FL [REDACTED]

Date Mailed: November 21, 2018  
MAHS Docket No.: 18-007827  
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 November 7, 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 Craig Curtiss, 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 February 17, 2016, Respondent electronically submitted to MDHHS an application for FAP benefits. Boilerplate application language stated that clients are to inform MDHHS of changes within 10 days. (Exhibit A, pp. 11-23.)

2. On September 6, 2016, Respondent applied for FAP benefits from the State of Florida. (Exhibit A, pp. 28-33.)
3. From October 2016 through July 2017, Respondent received FAP benefits from the state of Florida. (Exhibit A, pp. 24-27.)
4. From October 2016 through July 2017, Respondent received a total of \$ [REDACTED] in FAP benefits from the state of Michigan. (Exhibit A, pp. 41-43.)
5. On July 18, 2018, MDHHS requested a hearing to establish that Respondent received an OI of \$ [REDACTED] in FAP benefits from October 2016 through July 2017. MDHHS also requested a hearing to establish a 1-year disqualification against Respondent. (Exhibit A, p. 1.)
6. As of the date of hearing, Respondent had no previous IPV disqualifications.
7. During all relevant times, Respondent had no apparent impairment to understanding or fulfilling reporting requirements. (Exhibit A, p. 43.)

### **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 alleged that Respondent received an OI of \$ [REDACTED] in FAP benefits based on Respondent's duplicate receipt of FAP 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. 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.* Federal regulations refer to overissuances as "recipient claims" and mandate states to collect them. 7 CFR 273.18(a).

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. BEM 222 (October 2016), pp. 1-3. Benefit duplication is prohibited except for FAP in limited

circumstances (such as a residency in a domestic violence shelter). 7 CFR 273.12(a)(2) and *Id.*

MDHHS presented documentation of Respondent's FAP benefit issuance history from the State of Michigan. The documents established that Respondent received a total of \$[REDACTED] in FAP benefits from October 2016 through July 2017.

MDHHS presented emails from the state of Florida which stated that Respondent received FAP benefits from October 2016 through July 2017. The starting month of Respondent's Florida-issued FAP issuances was consistent with Respondent's application dated September 6, 2016, which requested FAP benefits in Florida (see Exhibit A, pp. 27-33). The evidence established that Respondent received FAP benefits from Florida from October 2016 through July 2017.

The evidence established that Respondent received FAP benefits from two different states from October 2016 through July 2017. As receipt of duplicate benefits is prohibited, MDHHS is entitled to recoup the \$1,904 issued to Respondent by the State of Michigan. MDHHS further alleged that Respondent committed an IPV justifying imposition of an IPV disqualification.

The types of recipient claims (i.e. overissuances) are those caused by agency error, unintentional recipient claims, and IPV. 7 CFR 273.18(b). 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).

It has already been established that Respondent received an OI of FAP benefits. MDHHS alleged the OI was caused by Respondent's purposeful failure to report a change in address and/or receipt of out-of-state benefits.

Federal law mandates clients to report changes in residency. 7 CFR 273.12(a)(1)(iii). MDHHS policy also 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 within 10 days.

BAM 105 lists other various items which clients must report to MDHHS, though the list is stated not to be exhaustive. Receipt of benefits from another state is not among the items listed. Though receipt of FAP benefits from another state is not specifically listed in BAM 105, it is such an obvious eligibility factor that it is found to be a change which must be reported to MDHHS.

MDHHS alleged that Respondent did not report duplicate receipt of FAP benefits during the OI period. MDHHS' allegation was consistent with Respondent's case notes by Respondent's specialists (see Exhibit A, pp. 34-35) which notably did not document any report by Respondent concerning residency in Florida or receipt of FAP benefits from Florida. No evidence suggested that Respondent reported receipt of Florida-issued FAP benefits to MDHHS. It is found that Respondent did not report duplicate receipt of FAP benefits to MDHHS. For an IPV, Respondent's failure to report must be intentional.

Respondent's failure to report duplicate receipt of FAP benefits resulted in an OI of \$[REDACTED]. The amount of the OI is incentive for Respondent to intentionally not report receipt of FAP benefits from another state. The amount of OI is consistent with an IPV.

Respondent received duplicate FAP benefits from Michigan and Florida for a period of 10 months. The 10-month period is a lengthy period consistent with an intentional failure to not report duplicate receipt of FAP benefits.

Based on the evidence, it is found that Respondent intentionally failed to report duplicate receipt of benefits. Thus, MDHHS established that Respondent committed 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.


MDHHS did not allege Respondent was previously disqualified due to IPV. Thus, a 1-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 established that Respondent received an OI of \$[REDACTED] in FAP benefits from October 2016 through July 2017. It is further found that MDHHS established a basis for a 1-year disqualification period against Respondent. The

MDHHS requests to establish an OI of \$ [REDACTED] and 1-year disqualification 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**

Lee Ann Lentner  
MDHHS-Kent 2-Hearings

**Petitioner**

MDHHS-OIG-Hearings

**Respondent**

[REDACTED]  
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