



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: January 2, 2019
MAHS Docket No.: 18-009601
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 December 19, 2018, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by Maria Williams, regulation agent with the Office of Inspector General. Respondent appeared and was unrepresented.

ISSUES

The first issue is whether MDHHS established a recipient claim of Food Assistance Program (FAP) against Respondent.

The second issue is whether MDHHS established an overissuance (OI) of FAP benefits against Respondent.

The third issue is whether MDHHS established by clear and convincing evidence that Respondent committed an intentional program violation (IPV) which justifies imposing a disqualification.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. From January 2, 2018, through March 6, 2018, Respondent exclusively spent FAP benefits in Michigan. (Exhibit A, pp. 33-37.)

2. On March 15, 2018, Respondent signed a one-year lease for a residence in Arizona. (Exhibit A, pp. 24-32.)
3. As of March 20, 2018, Respondent began employment in Arizona. (Exhibit A, p. 21.)
4. From March 14, 2018, through September 1, 2018, Respondent exclusively spent FAP benefits in Arizona. (Exhibit A, pp. 33-37.)
5. At no relevant time did Respondent receive FAP and/or Medical Assistance (MA) benefits from multiple states.
6. From June 2018 through August 2018, Respondent received MA benefits which cost the State of Michigan at least \$2,278.60. (Exhibit A, pp. 41-43.)
7. From June 2018 through August 2018, Respondent received FAP benefits totaling \$█████ (Exhibit A, p. 38.)
8. On September 14, 2018, MDHHS requested a hearing to establish that Respondent received overissuances of \$█████ in FAP benefits and \$█████ in MA benefits from June 2018 through August 2018. MDHHS also requested a hearing to establish a 1-year IPV disqualification against Respondent. (Exhibit A, p. 1.)
9. As of the date of hearing, Respondent had no known history of IPV. (Exhibit A, p. 45.)

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 \$█████ in FAP benefits and \$█████ in MA benefits from June 2018 through August 2018 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

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, which caused the benefit overissuance.

Federal regulations refer to FAP overissuances as “recipient claims” and mandate states to collect them. 7 CFR 273.18(a).¹ The types of recipient claims are those caused by agency error, unintentional recipient claims, and IPV. 7 CFR 273.18(b).

FAP overissuances caused by MDHHS or client errors are not pursued if less than \$250. BAM 700 (January 2018), p. 9. Suspected IPV's are referred when totaling \$500 or more. BAM 720 (October 2017), p. 5.

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.*

Respondent testified that she attempted to call her specialist in August 2018 to inform MDHHS that she moved from Michigan. Respondent's testimony is not relevant because MDHHS may establish a recipient claim even if MDHHS is at fault for the overissuance.

MDHHS presented a one-year lease signed by Respondent in March 2018. The lease concerned an Arizona property rented by Respondent. MDHHS also presented Respondent's history of FAP expenditures which listed that Respondent spent Michigan-issued FAP benefits in Arizona since March 2018. Furthermore, MDHHS presented employment documents from Respondent indicating that Respondent worked

¹ Federal regulations apply to SNAP (Supplemental Nutrition Assistance Program). FAP is the Michigan equivalent of SNAP and is subject to SNAP regulations.

in Arizona as of March 2018. Respondent testimony acknowledged that she lived in Arizona since March 2018. This evidence supported a finding that Respondent lived in Arizona since March 2018.

Respondent testified that she was very uncertain about her commitment to becoming an Arizona resident. Respondent's testimony implied that she maintained Michigan residency while living in Arizona. No such implication will be adopted as Respondent spent FAP benefits, worked, and signed a one-year lease in Arizona - all before the overissuance period.

Respondent's benefit history verified that Respondent received \$■■■■ month (\$■■■■ total) from June 2018 through August 2018. As Respondent was not a Michigan resident during the OI period, Respondent was not entitled to receive \$■■■■ in FAP benefits. Thus, MDHHS established a recipient claim against Respondent for \$■■■■ in overissued FAP benefits.

Alleged MA OI

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.*

For MA benefits, MDHHS may seek recoupment for agency errors or IPVs. BAM 710 (January 2018), p. 1. MDHHS may not pursue overissuances for agency errors. *Id.*

For a client error to be established, MDHHS must establish that Respondent was aware and/or should have been aware of the need to report changes in residency. MDHHS presented a Redetermination (Exhibit A, pp. 12-19) submitted by Respondent to MDHHS on July 31, 2017. MDHHS alleged the document included boilerplate language informing Respondent of the need to report changes; the document had no such language.

Given the evidence, MDHHS failed to establish that Respondent was informed of the need to report changes in residency. The failure renders the fault of the MA overissuance to be MDHHS'. As MDHHS may not pursue an MA overissuance caused by their own error, MDHHS will be denied their request to establish an MA overissuance against Respondent.

Alleged IPV

MDHHS claimed both FAP and MA overissuances were caused by an IPV. It has already been found that MDHHS was at fault for any MA overissuance. Thus, an IPV cannot be established for MA benefits. An IPV is still plausible due to the FAP-benefit OI. 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 Electronic Benefit Transfer (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).

MDHHS alleged that Respondent failed to report to MDHHS 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 over-issued 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.

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.

Individuals found to have committed an IPV shall be ineligible to receive FAP benefits. 7 CFR 273.16(b). The standard disqualification period is used in all instances except when a court orders a different period. IPV penalties are as follows: one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. *Id.* and BAM 725 (January 2016), p. 16.

Without a finding that a client committed an IPV, an IPV disqualification cannot follow. As MDHHS did not establish an IPV by Respondent, MDHHS is denied their request to establish an IPV disqualification.

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. It is further found that MDHHS failed to establish an overissuance of MA benefits of \$ [REDACTED]. The MDHHS requests to establish an IPV disqualification and MA overissuance against Respondent are **DENIED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established a recipient claim of \$ [REDACTED] in FAP benefits overissued to Respondent from June 2018 through August 2018. The MDHHS request to establish a recipient claim against Respondent is **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

Petitioner

MDHHS-OIG-Hearings

DHHS

Randa Chenault
MDHHS-Oakland-3-Hearings

Respondent

[REDACTED]
[REDACTED]
[REDACTED] AZ [REDACTED]

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C Gardocki
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