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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: October 26, 2018
MAHS Docket No.: 18-003752
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 September 26, 2018, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED] regulation agent, with the Office of Inspector General. Respondent appeared and was unrepresented.

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. From May 2014 through June 2017 and from October 2017 through at least March 2018, Respondent received FAP benefits from Arizona. Exhibit A, pp. 51-59.

2. On November 10, 2016, Respondent electronically submitted to MDHHS an application for Food Assistance Program (FAP) benefits. Boilerplate language stated that clients are to report changes to MDHHS within 10 days. Exhibit A, pp. 12-40.
3. On November 17, 2016, MDHHS mailed Respondent a Notice of Case Action informing Respondent of an approval of [REDACTED] in FAP benefits beginning December 2016. Boilerplate language stated that clients are to report changes to MDHHS within 10 days. Exhibit A, pp. 41-44.
4. On November 17, 2016, MDHHS mailed Respondent a Change Report form. Exhibit A, pp. 45-46. It stated that clients are to use the form to report changes to MDHHS within 10 days.
5. From June 30, 2017, through July 8, 2017, Respondent spent Michigan-issued FAP benefits exclusively in Michigan. Exhibit A, pp. 49-50.
6. From June 15, 2017, through June 25, 2017, and July 14, 2017, through September 12, 2017, Respondent spent FAP benefits outside of Michigan. Exhibit A, pp. 49-50.
7. From December 2016 through July 2017, Respondent received [REDACTED] in monthly FAP benefits from the State of Michigan. Respondent received [REDACTED]/month in FAP benefits for August 2017 and September 2017. Exhibit A, pp. 47-48.
8. On April 17, 2018, MDHHS requested a hearing to establish that Respondent received an OI of [REDACTED] in FAP benefits from December 2016 through September 2017. MDHHS also requested a hearing to establish an IPV disqualification of 10 years 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 an OI of [REDACTED] in FAP benefits from December 2016 through September 2017 based on Respondent's duplicate receipt of benefits. An Intentional Program Violation Repayment Agreement (Exhibit A, pp. 6-7) sent to Respondent as part of MDHHS' prehearing procedures alleged a contradictory OI period from June 2016 through September 2017. The contradictory OI period will be assumed to have been MDHHS error and the

analysis will consider the OI period from December 2016 through September 2017 as alleged in the Hearing Summary (Exhibit A, p. 1).

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 an MDHHS action to identify and recover a benefit overissuance. BAM 700 (January 2016), pp. 1-2.¹

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. Benefit duplication is prohibited except for FAP in limited circumstances (such as a residency in a domestic violence shelter). *Id.*² A person cannot receive FAP in more than one state for any month. BEM 222 (October 2016), pp. 1-3.

MDHHS presented Respondent's benefit issuance history from the State of Michigan. The documentation verified that Respondent received a total of █████ in Michigan-issued FAP benefits from December 2016 through September 2017.

MDHHS presented an email from the State of Arizona received in response to MDHHS' inquiry concerning Respondent's FAP issuances from Arizona. The email verified that Respondent received FAP benefits from Arizona from May 2014 through June 2017 and from October 2017 through at least March 2018. Given Respondent's FAP issuance history from Arizona and Michigan, MDHHS failed to establish that Respondent received duplicate benefits from July 2017 through September 2017.

MDHHS also summarily alleged that an OI from July 2017 through September 2017 could be established based on non-Michigan residency. The only evidence to support non-Michigan residency was Respondent's FAP expenditure history which showed that Respondent spent FAP benefits outside of Michigan from June 15, 2017, through June 25, 2017, and July 14, 2017, through September 12, 2017. Spending FAP benefits outside of Michigan is not banned by the State of Michigan or federal regulations. Respondent's FAP expenditures outside of Michigan tend to verify that Respondent was not in Michigan for some weeks, but nothing more. Being outside of Michigan does not equate to a change in residency.

Based on the evidence, MDHHS did not establish an OI for July 2017 through September 2017. Respondent received █████ in FAP benefits from Michigan during those months. The analysis will proceed to consider the remaining alleged OI of █████ over the months from December 2016 through June 2016. The remaining OI requires consideration of the types of OIs and the minimum amount of OI that MDHHS may pursue.

¹ See 7 CFR 273.18(c)(1)(ii) for the corresponding federal regulation.

² See 7 CFR 273.3(a) for the corresponding federal regulation.

MDHHS categorizes OIs into agency errors, client errors, and IPVs. Client and Agency errors of FAP benefits are not pursued if the estimated amount is less than █████ per program. BAM 700 (January 2018) p. 1. Suspected IPVs are referred to OIG when the total overissuance amount for all programs combined is █████ or more. BAM 720 (October 2017) p. 5. One exception to the IPV threshold is when the IPV is based on duplicate receipt of benefits. *Id.*

Given MDHHS policy, the potential OI of █████ is not recoupable if it falls under client or agency error. The OI of █████ is recoupable if it was caused by an IPV because the present case involves an allegation of duplicate assistance. Thus, an OI cannot be found until it is determined if Respondent committed 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. 1.³

An 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. BAM 720 (October 2017), p. 1. 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).

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2016), p. 11. Non-income changes must be reported within 10 days after the client is aware of them. *Id.*, p. 12.

A person is disqualified for a period of 10 years if found guilty through the administrative hearing process, convicted in court or by signing a repayment and disqualification agreement (such as a DHS-826, Request for Waiver of Disqualification Hearing, or DHS-830, Disqualification Consent Agreement) of having made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (October 2015), p. 1.

³ See also 7 CFR 253.8 for the corresponding federal regulations.

MDHHS alleged that Respondent failed to intentionally report dual receipt of FAP benefits and/or residency. An allegation of failing to report does not equate to a fraudulent statement. Thus, MDHHS failed to justify imposing a 10-year disqualification against Respondent. The analysis will continue to determine if a standard disqualification period is justified.

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.

MDHHS alleged that Respondent failed to report to MDHHS receipt of FAP benefits from Arizona. Case comments from Respondent's specialist (Exhibit A, p. 60) did not document a reporting by Respondent concerning Arizona residency or receipt of benefits from Arizona were supportive in concluding that Respondent; Respondent did not claim otherwise. Given the evidence, it is found that Respondent did not report Arizona residency or receipt of FAP benefits. For an IPV, MDHHS must also establish that Respondent's failure to report was intentional.

MDHHS presented Respondent's FAP application dated November 10, 2016, as evidence of Respondent's intent. Respondent answered "no" in response to a question asking if he received FAP benefits that month. Exhibit A, p. 14.⁴ Correspondence from Arizona reported that Respondent received FAP benefits. Respondent also answered "no" in response to a question asking if he is "Getting Other FS Benefits?" Exhibit A, pp. 15-16. In Respondent's defense, the questions could be interpreted to apply to Michigan-issued FAP benefits which Respondent did not receive that month. Any ambiguity could have been clarified if MDHHS applications asked, "Are you receiving FAP benefits form another state?" No such question was apparent on the application.

MDHHS established an OI of only [REDACTED]. Generally, the smaller the overissuance amount, the less likely the intent to commit an IPV. The [REDACTED] OI in the present case is such a relatively small amount (compared to other IPV cases brought by MDHHS) that an intent to defraud cannot be inferred simply based on the windfall for Respondent. Also notable is that Respondent received only [REDACTED]/month in FAP benefits from Michigan during the OI period. The monthly issuances is the smallest amount of FAP benefits a client can receive (see RFT 260). A minimum FAP issuance and relatively small total OI are not generally consistent with an intent to defraud.

Consideration was given to inferring a fraudulent intent based on Respondent's receipt of duplicate FAP benefits for several months. Generally, the longer the period a client fails to report information, the more likely an IPV is to have occurred. In the present case, Respondent received duplicate FAP benefits for 8 months which is generally

⁴ Respondent denied submitting the application but was not credible in his denial. Respondent admitted the application included accurate information of his date of birth and social security number. Respondent admitted the application used his mother's address where he sometimes resided. Respondent admitted he spent the Michigan-issued FAP benefits in Arizona.

indicative of a purposeful failure to report information. The present case's circumstances suggest Respondent was not aware of Michigan's benefit issuances for most of the OI period.

Respondent denied being aware of Michigan-issued FAP benefits until June 2017. The first time Respondent spent Michigan-issued FAP benefits occurred on 6/15/17. Though MDHHS sent notice to Respondent of a FAP approval several months earlier, Respondent's expenditure history was consistent with knowledge of Michigan-issued FAP benefits only very late into the OI period. In total, Respondent's unquestionable awareness of duplicate receipt of FAP benefits lasted less than the last 45 days of the OI period. Such a small timeframe is more consistent with a non-fraudulent intent than if Respondent's awareness of duplicate receipts occurred at the beginning of the 8 month OI period.

Based on the small OI amount, approximate 45 day period that Respondent knew of the OI, and the somewhat vague application question justify a finding that MDHHS did not establish an IPV by Respondent. Without an IPV by Respondent, MDHHS is not entitled to establish an IPV disqualification period or OI.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish a basis for an IPV disqualification period against Respondent. MDHHS further failed to establish that Respondent received an OI of [REDACTED] in FAP benefits. The MDHHS requests to establish an IPV disqualification and OI are **DENIED**.

CG/tlf



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

Via Email:

MDHHS-Saginaw-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]