

Respondent's signature was certification, under penalties of perjury, that all reported information was accurate. Exhibit A, pp. 11-50.

2. In November 2017, Respondent received \$[REDACTED] in FAP benefits from the State of Michigan.
3. In November 2017, Respondent received FAP benefits from the State of Wisconsin. Exhibit A, p. 76.
4. From November 26, 2017, through February 25, 2018, Respondent spent Michigan-issued FAP benefits in Michigan. Exhibit A, pp. 82-83.
5. On [REDACTED] 2017, Respondent applied for FAP benefits in Wisconsin. Respondent reported a residential address in Wisconsin. Respondent also answered "No" to a question asking if she was receiving FAP benefits. Exhibit A, p. 52.
6. On an unspecified date, the State of Wisconsin denied Respondent's application dated [REDACTED] 2017, due to Respondent failing to provide verifications.
7. From February 27, 2018, through April 27, 2018, Respondent spent Michigan-issued FAP benefits in Wisconsin and Illinois.
8. On April 24, 2018, OIG commenced an investigation of Respondent after a PARIS Interstate Report showed Respondent received FAP benefits in Wisconsin. Exhibit A, pp. 70-75.
9. From December 2017 through May 2018, Respondent received \$[REDACTED] month in FAP benefits from the State of Michigan. Exhibit A, p. 85.
10. On April 11, 2019, MDHHS requested a hearing to establish a recipient claim of \$[REDACTED] in FAP benefits against Respondent for FAP benefits allegedly overissued to Respondent in November 2017 and March 2018 through May 2018. MDHHS also requested a hearing to establish a one-year disqualification against Respondent. Exhibit A, p. 1.
11. As of the date of hearing, Respondent had no previous IPV disqualifications.

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 overissuance of \$█ in FAP benefits from November 2017 through May 2018. MDHHS alleged the same in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 6-7) sent to Respondent as part of MDHHS' prehearing procedures. MDHHS alleged the OI was due to receipt of duplicate benefits and/or non-Michigan residency.

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).

OI based on duplicate receipt of benefits

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. FAP benefit duplication is prohibited except in limited circumstances (such as a residency in a domestic violence shelter). *Id.* and 7 CFR 273.12(a)(2).

MDHHS presented documentation of Respondent's past FAP issuances. Exhibit A, p. 85. The documentation listed a \$█ issuance to Respondent for November 2017.

At some point, a PARIS Interstate Match informed MDHHS that Respondent may have received duplicate FAP benefits from Wisconsin. On February 27, 2019, MDHHS emailed the State of Wisconsin requesting documentation of Respondent's Wisconsin-issued FAP benefits. Exhibit A, pp. 52-53. The State of Wisconsin responded by informing MDHHS that Respondent received FAP benefits in November 2017.

The evidence established that Respondent received FAP benefits from the States of Michigan and Wisconsin for November 2017. The evidence also established that Respondent received \$█ in FAP benefits for November 2017 from the State of Michigan. Respondent's receipt of duplicate FAP benefits for November 2017 justifies MDHHS' request to establish a \$█ recipient claim against Respondent.

OI based on non-Michigan residency

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. 7 CFR 273.3(a).

Certified change reporting households are required to report changes in residency and/or shelter costs to state agencies. 7 CFR 273.12(a)(1)(iii). Such changes must be reported to the state agency within 10 days. 7 CFR 273.12(a)(2). MDHHS policy also states that clients must report non-income changes that potentially affect eligibility or benefit amount. BAM 105 (April 2016), pp. 11-12.

MDHHS alleged that Respondent was not a Michigan resident as of February 2018 and that FAP issuances to Respondent from March 2018 through May 2018 were overissued due to non-Michigan residency.

MDHHS alleged that Respondent's application to Wisconsin dated December 8, 2017, supported non-Michigan residency. In the application, Respondent reported a residence in Wisconsin. December 8, 2017 is nearly three full months before the OI period starting in March 2018; Respondent's residency nearly three months before an OI period is not particularly insightful into Respondent's state of residency during the OI period. Ongoing receipt of FAP benefits from Wisconsin would be consistent with Wisconsin residency but Wisconsin denied Respondent's application due to the client's failure to return verifications. Exhibit A, p. 52.

MDHHS contended that where Respondent spent FAP benefits sufficiently verified Respondent's state of residency. From November 26, 2017, through February 25, 2018, Respondent spent Michigan-issued FAP benefits in Michigan. Exhibit A, pp. 82-83. From February 27, 2018, through April 27, 2018, Respondent spent Michigan-issued FAP benefits in Wisconsin and Illinois. Respondent's usage in Michigan in January 2018 and February 2018 negates MDHHS' claim that Respondent was a Wisconsin resident during the OI period based on her application from December 2017. Also, if Respondent was not a Wisconsin resident until February 27, 2018, MDHHS could not begin an OI period until May 2018. MDHHS policy requires delaying an OI period due to unreported changes until the first full benefit month following time for the client to report changes (see BAM 105), MDHHS to process changes (see BAM 220), and the full negative action suspense period (see *Id.*). BAM 715 (October 2017), p. 5.

A second reason supports rejecting the entire OI from March 2018 through May 2018. The location of a client's FAP expenditures is not sufficient evidence of a client's state of residency. Nothing within federal or state regulations prohibit clients from traveling or spending FAP benefits outside of their state of residency. Other than where Respondent spent FAP benefits, MDHHS did not provide evidence of Respondent's state of residency during the OI period.

Given the evidence, MDHHS failed to establish an OI from March 2018 through May 2018 based on Respondent's alleged non-Michigan residency. Documentation of Respondent's history of FAP benefits listed \$■■■■ month issuances to Respondent from March 2018 through May 2018. Thus, MDHHS will be denied \$■■■■ of its requested recipient claim.

Intentional Program Violation

The only overissuance established by MDHHS was \$147 in FAP benefits overissued to Respondent for November 2017. MDHHS alleged the overissuance was caused by Respondent's IPV.

The types of recipient claims 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 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).

To establish an IPV, MDHHS alleged that Respondent failed to report non-Michigan residency. In the OI analysis for residency, it was found that MDHHS did not establish an OI. Without an OI, MDHHS cannot establish a related IPV. Thus, Respondent's alleged failure to update residency cannot be a basis for an IPV disqualification.

Generally, receipt of duplicate FAP benefits is a compelling basis for an IPV. The generality is based on a postulation that clients know not to receive benefits from duplicate states. Mere receipt of duplicate benefits is supportive of finding that Respondent committed an IPV.

MDHHS established that Respondent received duplicate FAP benefits for only a portion of September 2017. Though receipt of duplicate FAP benefits is consistent with an IPV, receipt of duplicate benefits for less than one month is not. Such circumstances are consistent with a client realizing that receipt of duplicate benefits is improper and quickly taking actions to halt the issuance of benefits from one of the states.

MDHHS testimony emphasized that Respondent, in her application dated November 8, 2017, answered "No" to a question asking, "Are you getting Food Assistance this month?" Respondent did receive FAP benefits from Wisconsin in November 2017. Had

Respondent reported this information, MDHHS would likely not have approved Respondent for FAP benefits in November 2017. Respondent also left blank application questions asking if she had just moved from another state. Had Respondent reported her recent move from Wisconsin, MDHHS might have followed-up with Respondent or the State of Wisconsin concerning FAP issuances. Thus, Respondent's application misreporting directly led to FAP benefits being overissued in November 2017.

Respondent also failed to report in her Wisconsin application dated December 8, 2017, ongoing receipt of benefits from Michigan. Respondent's failure to report to Wisconsin is a misreporting. Respondent's misreporting did not cause an OI as the application was denied due to a failure by Respondent to verify information, however, the misreporting is consistent with an intent to defraud.

Consideration was given to whether MDHHS may establish an IPV for a relatively small overissuance. IPV's may be pursued for overissuances exceeding \$500 though IPV's for less than \$500 may be pursued if caused by concurrent receipt of benefits. BAM 720 (October 2017), p. 5. As the present case involves concurrent receipt of benefits, MDHHS may establish an IPV for less than a \$500 overissuance.

Given the evidence, MDHHS clearly and convincingly established that Respondent intentionally failed to report information which caused an OI of FAP benefits. Thus, Respondent committed 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.

MDHHS did not allege that Respondent previously committed an IPV. Thus, a one-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 a recipient claim of \$[REDACTED] for FAP benefits overissued to Respondent in November 2017. It is further found that MDHHS established that Respondent committed an IPV justifying a one-year period of disqualification. The MDHHS requests to establish a recipient claim of \$[REDACTED] and one-year IPV disqualification against Respondent are **APPROVED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish a recipient claim of \$[REDACTED] against Respondent for FAP benefits issued from March 2018 through May 2018. The MDHHS request to establish a recipient claim of \$[REDACTED] against Respondent is **DENIED**.

CG/jaf



Christian Gardocki
Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS (via electronic mail)

Jackie Stempel
MDHHS-Muskegon-Hearings
L Bengel
Policy Recoupment

Petitioner (via electronic mail)

MDHHS-OIG-Hearings

Respondent (via first class mail)

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