



RECOMMENDED ORDER

Customer's Name: CAROLANN SEATON		Driver's license number: [REDACTED]	Hearing/review date (mm/dd/yyyy) 08/19/2010
Legal Address: [REDACTED]		Hearing/review type: Other (specify): <u>Residency</u>	Administrative Law Judge: Carla D. Hartman, JD
Attorney's name (if applicable):		Telephone number:	Hearing/review location: Indianapolis, IN
Attorney's Address (if applicable):			

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This matter having come before the Administrative Law Judge for the above noted "hearing/review type," and the Administrative Law Judge in this matter, having considered the parties' factual stipulations, evidence presented by the parties, and/or written or oral arguments by the parties, hereby issues the following Findings of Fact, Conclusions of Law and Recommended Order.

FINDINGS OF FACT

On the above noted date, this Administrative Law Judge ("ALJ") conducted an administrative hearing at the above-listed location. The customer named above ("Customer") appeared. The Indiana Bureau of Motor Vehicles ("BMV") presented its evidence, reports and/or documents to this ALJ, all of which are admitted into evidence, are attached and incorporated by reference into this Recommended Order and made factual findings. The Customer's driving record is admitted into evidence and made a part of the factual findings. Notice of this hearing was sent to the Customer. The ALJ finds the following additional relevant facts:

BMV suspended Customer's driving privileges and revoked the title and registration for a vehicle in Customer's name through emergency orders dated 07/03/2010 and 07/07/2010, respectively. A hearing on the emergency orders was scheduled for 08/06/2010. Notice of the hearing was sent to Customer. Customer contacted BMV on 08/05/2010 requesting a continuance. That same day, BMV received notices of appearance from two attorneys purporting to represent Customer: Trent A. McCain and Frederick T Work. This ALJ granted the continuance and reset the matter for 08/19/2010. Notices of the resetting were forwarded to Customer and each attorney who had filed a notice of appearance.

On 08/19/2010, Customer appeared without counsel, stating that attorney Work was in the hospital and adding simply that attorney McCain would not be joining her. The hearing proceeded without counsel for Customer. BMV was represented by attorney Mark Goodrich. Nathan Moore provided additional testimony.

BMV stated its position that Customer has not sufficiently proven her residency in Indiana; and, without proof of her residency in this state, she may not hold a valid license, nor may she register or title a vehicle in Indiana. Additionally, BMV asserts that Customer has committed fraud by obtaining a credential and attempting to title and register a vehicle in this state when she was not a resident.

BMV stated that it received word from the state of Michigan that Michigan was investigating whether Customer was legally holding a driver's license in that state. BMV therefore began in investigation to determine whether Customer is able legally to hold a license in this state.

BMV provided copies of Indiana BMV transactions indicating that Customer obtained a duplicate driver's license in this state most recently on 09/01/2009. In that transaction, Customer indicated her address was [REDACTED] 46407. The application seems to indicate that Customer did not surrender a driver's license from any other jurisdiction; however, it does indicate that she provided a visa card as identification. No proof of residency was presented.

Page 2 of the 09/01/2009 Indiana application has a section which asks whether Customer was "holding a valid permit,

license or identification card from another state." There are "yes" and "no" boxes beside the question. None of the boxes are checked.

A "RESIDENT STATEMENT" on the second page of the application, which was signed by Customer, reads, "I hereby swear or affirm that the information that was read or entered on this entire form (including both sides) is correct. I am a resident, or intend to make Indiana my primary place of residence. I understand that making a false statement on this form may constitute the crime of perjury."

Customer received a duplicate credential based on the 09/01/2009 application. That credential was set to expire on 02/01/2012.

Prior to the 09/01/2009 transaction, Customer applied for a duplicate license on 08/15/2009. That application does indicate that she surrendered a license along with a work ID and Social Security card; however, the application does not indicate which state issued the surrendered license. That application indicated the same address in Gary, Indiana. Similar to the 09/01/2009 transaction, no boxes are checked in the section which indicates whether Customer held a valid license in another state. Photocopies produced as an exhibit appear to indicate that Customer surrendered a previously issued Indiana license. While the copy is difficult to read, it appears that the Indiana license surrendered was issued on 02/29/1988 and expired 02/92. Customer signed the Resident Statement indicating that she was a resident of Indiana or intended to make Indiana her primary place of residence.

Prior to the 08/15/2009 transaction, on 03/26/2008 Customer applied for what appears to have been a renewal of her Indiana license which expired on 02/01/2008. Customer indicated the same residence in Gary, Indiana as on subsequent applications. It appears that the application has a pre-printed section which asks what type of identification was provided to branch personnel. In that section, it appears that the words "Surrendered Old License/Permit/ID" were intended to have been circled as appropriate. On later applications, this section is completed by hand, either by circling one of the three pre-printed options, or by writing in what was provided. (E.g., on the 09/01/2009 application, some one had drawn a line through the three pre-printed options and had written in "Visa card.") On the 03/26/2008 application, this section appears to have been unmarked. The "Resident Statement" has been signed.

BMV then provided copies of driver's license transactions in Michigan indicating that Customer obtained/renewed her license there most recently on 02/01/2010. In that transaction, it appears that Customer indicated her address as [REDACTED] 49129, an address which appeared consistently in transactions dated 10/22/2009, 02/01/2006, 11/07/2002, and 02/06/2002. The 02/01/2009 transaction includes a "Special Mailer Addr" at [REDACTED] 46407, the same address Customer used in her Indiana BMV applications. There is no indication that Customer surrendered a credential from any other jurisdiction, notably Indiana, upon applying for a Michigan driver's license on 02/01/2010.

Customer's application for a Michigan driver's license dated 10/22/2009 indicates identical address information as the 02/01/2010 application. It also includes the "Special Mailer Addr" in Gary, Indiana, and further adds a comment line indicating a "ONE TIME MAILER." Again, there is no indication that Customer surrendered a credential from any other jurisdiction.

Customer's application for a Michigan driver's license dated 02/01/2006 indicates identical address information as the 02/01/2010 application. It does not include the "Special Mailer Addr" in Gary, Indiana, but does add a mailing address to a PO Box in Union Pier, MI. There is no indication that Customer surrendered a credential from any other jurisdiction.

Customer's application for a Michigan driver's license dated 11/07/2002 indicates identical address information as the 02/01/2010 application. It does not include the "Special Mailer Addr" in Gary, Indiana, but does add a mailing address to a PO Box in Union Pier, MI. There is no indication that Customer surrendered a credential from any other jurisdiction.

Customer's application for a Michigan driver's license dated 02/06/2002 indicates identical address information as the 02/01/2010 application. It does not include the "Special Mailer Addr" in Gary, Indiana, but does add a mailing address to a PO Box in Union Pier, MI. There is no indication that Customer surrendered a credential from any other jurisdiction.

BMV presented copy of the "Indiana Department of Revenue Certificate of Gross Retail or Use Tax, EXEMPTION for the Purchase of a Motor Vehicle or Watercraft," dated 05/26/2010. In that Certificate, Customer signed a "New Resident Statement" indicating that she became an Indiana resident on 09/02/2009 and that her previous state of residence was Indiana. Page two of the certificate indicates that the gross sales and use tax must be paid unless an exemption applies. The exemptions include #8 on the list which states, "Vehicles previously purchased, titled and licensed in another State or

Country by a bonafide resident of that State of Country, who subsequently has become an Indiana resident, are exempt from Indiana sales/use tax upon titling or registration of the vehicle in Indiana . . . The New Resident Statement on the front of the form MUST be completed."

Customer did complete the new resident statement; however, she clearly indicated that she was not a new resident by indicating that her previous state of residence was Indiana. From the information stated on the Certificate, certified by Customer as true, Customer was not a bonafide resident of another State or Country who subsequently became a resident of Indiana. It appears from the Certificate of Title that Customer purchased the vehicle on or about 06/02/2005 and attempted to register the vehicle in Indiana on 05/26/2010.

In summary, BMV asserts that Customer has committed fraud in the application process by presenting herself as both an Indiana and a Michigan resident, and by not surrendering her Michigan license when she applied for an Indiana license. Further BMV asserts that Customer committed fraud by attempting to title and register a vehicle in Indiana when she is not a resident of this state. BMV requested that Customer's record and the title/registration for her 2005 Ford be invalidated until she provides proof of Indiana residency; and, when she does provide proof of residency that her driving privileges be suspended for a period of one year plus a one-year probationary period.

The Customer presented evidence and the ALJ finds these facts:

Customer indicated that there is another case pending against her and she preferred not to testify at this hearing due to her concerns that any testimony she gave in this matter may have an adverse effect on that pending case. Customer was unable to clarify the exact nature of the case, but did produce a large stack of papers, the top page of which indicated a filing in a Lake County, Indiana court.

Customer was advised that she was free to testify or not; however, this ALJ would make a determination regarding the status of her license and title/registration based on the information gathered in today's hearing.

Customer stated that she wanted to make one statement regarding the address used on her Michigan license applications. That statement indicated that she doesn't know the actual street address used in Union Pier; she further indicated that no one in Union Pier knows their address because everyone gets their mail at the post office. Further, Customer stated that she did not have to provide the address to the Michigan BMV as it was already on the record when she would go to renew her license.

Customer also pointed out that while there was a transaction recorded at the Indiana BMV on 08/15/2009, she did not receive a credential at that time because she was unable to pay the fee. She returned to the BMV a couple of weeks later (on 09/01/2009) and obtained a credential at that time.

Customer summarized by stating that she has had no violations of any type on her record and that a one-year suspension plus a one-year of probation seemed like a harsh penalty. Finally, Customer indicated her belief that there should be no sanction imposed if she satisfactorily proves her residency in Indiana.

Customer provided no proof of her residency in Indiana, and made no statement which might have indicated her belief that she is an Indiana resident.

FINDINGS.

According to the statements Customer made on her driver's license applications in recent years, Customer was a resident of Michigan at least on 02/01/2006 when she applied for and received a Michigan license (expiring 02/01/2010). She then renewed her driver's license as a Indiana resident on 03/26/2008. She obtained a duplicate Indiana license indicating her continued residence in this state on 08/15/2009 and 09/01/2009. She then applied for a duplicate of her Michigan license on 10/22/2009, then applied for renewal of her Michigan license on 02/01/2010.

Customer's Indiana record dates back to 1996. All addresses on her record are consistently reported as [REDACTED] 46407. I see no indication on her file that Customer reported a move to another state.

While no clear evidence was provided indicating the full history of Customer's Michigan record, the applications presented

date back to 2002. Each application consistently reports Customer's address as [REDACTED] 49129.

Customer's history clearly shows that she was most recently a resident of Michigan. No proof was provided which would indicate that Customer has been a resident of Indiana since 10/22/2009 when she applied for a duplicate of her Michigan license on that date, then applied for renewal of her Michigan license on 02/01/2010.

The certificate for sales/use tax exemption, dated 05/26/2010, indicates that she became an Indiana resident on 09/09/2009. However, while she applied for renewal of her Indiana license on 08/15/2009 and again on 09/01/2009, she then indicated her Michigan residency on 10/22/2009.

From all of which it appears that Customer has indicated her residence in both Indiana and Michigan only when it suited her interests. I have seen nothing which indicates that Customer truly is an Indiana resident. Based on the facts that she repeatedly obtained duplicate licenses and renewal of her licenses in both states, that she presented herself in those transactions not as a new state citizen but rather as a continuing resident, that she did not surrender a credential from another state at any of the Indiana transactions presented by BMV, that there is no evidence that she surrendered her Indiana license(s) at any of the Michigan transactions, and that Customer failed to offer any evidence which would show her true state of residence, I find that Customer has not provided sufficient proof that she is an Indiana resident and did commit fraud in the application process at least in the Indiana transactions dated 03/26/2008, 08/15/2009, and 09/01/2009. Further, I find that Customer committed fraud in the application process for titling and registering her vehicle when she applied for an exemption based on her residency in another state and listing that other state as Indiana.

CONCLUSIONS OF LAW

Under Indiana Code 9-30-4-1, the BMV has broad powers to impose sanctions regarding the driving privileges of any person for any reasonable grounds appearing on the records of the BMV. 140 IAC 1-1-8 provides guidelines for possible sanctions.

RECOMMENDED ORDER

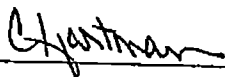
Mark Customer's record as fraudulent until such time as she is able to provide sufficient proof of her Indiana residency. When sufficient proof of residency is provided, suspend Customer's driving privileges for twelve (12) months, beginning with the date the proof of residency was provided.

Invalidate the title and registration of Customer's 2005 Ford vehicle until such time as Customer is able to provide proof of Indiana residency.

Additional recommendations: None.

Any actions taken against Customer's driving privileges pursuant to this Recommended Order are in addition to any other active or pending suspensions, revocations, invalidations, disqualifications etc., except as this Recommended Order may specifically provide. The BMV will additionally confirm to the Customer by a separate notice of the effective dates for a suspension, probation, revocation, invalidation, disqualification, etc. of driving privileges entered pursuant to this Recommended Order, if applicable. A Recommended Order becomes effective as a final order after the time for filing a request for an appeal/reconsideration passes; which will be on the nineteenth (19th) day after the below date. However, pursuant to Indiana Code section 4-21.5-4-3, an Emergency or Temporary Order issued pursuant to Indiana Code chapter 4-21.5-4 is immediately effective when issued. A copy of this document is delivered to both parties in person, by e-mail, or by U.S. mail, first class postage, this date of signing.

Administrative Law Judge's signature:



Date (mm/dd/yyyy):
08/24/2010

BMV tape number:
08/19/2010, Seaton

APPEAL RIGHTS AND PROCESS

Either party may appeal this Recommended Order by complying with the applicable requirements found in Indiana Code 4-21.5-3, 4-21.5-4, 9-30-4-3, and/or 140 Indiana Administrative Code section 1-1-11.

An appeal to the BMV, entitled a "Request for Reconsideration," is started by mailing a written Request for Reconsideration postmarked up to eighteen (18) days from the date of this Recommended Order to: Indiana Bureau of Motor Vehicles, Room N440, Hearings Department, 100 North Senate Avenue, Indianapolis, IN 46204-2214.