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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: December 9, 2016
MAHS Docket No.: [REDACTED]
Agency No.: [REDACTED]
Petitioner: [REDACTED]
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 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 [REDACTED], 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 Respondent received an overissuance (OI) of benefits.

The second issue is whether MDHHS established that Respondent committed an intentional program violation (IPV).

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Respondent was an ongoing recipient of Food Assistance Program (FAP) benefits from the State of Michigan.
2. From [REDACTED], Respondent probably, though not clearly and convincingly, lived with her spouse.
3. From [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED], Respondent's spouse had ongoing employment income.
4. From [REDACTED], Respondent received FAP benefits, in part, based on the exclusion of her spouse as a FAP benefit group member.
5. Respondent's probable failure to report her spouse as a FAP benefit group member caused an OI of [REDACTED] in FAP benefits from [REDACTED] through [REDACTED] [REDACTED].
6. On [REDACTED] MDHHS requested a hearing to establish Respondent committed an IPV and received an OI of [REDACTED] in FAP benefits from [REDACTED] [REDACTED].

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 requested a hearing, in part, to establish Respondent received an overissuance of benefits. MDHHS presented an Intentional Program Violation Repayment Agreement (Exhibit 1, pp. 7-8) dated [REDACTED]. The agreement (unsigned by Respondent) alleged Respondent received an over-issuance of [REDACTED] in FAP benefits from [REDACTED]. The repayment agreement, along with MDHHS testimony, alleged the OI was based on Respondent's failure to accurately report household members and/or household income.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (January 2016), p. 1. An overissuance [bold lettering removed] is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. *Id.* Recoupment [bold lettering removed] is a MDHHS action to identify and recover a benefit overissuance. *Id.*, p. 2.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (July 2015), p. 10. Changes must be reported within 10 days of receiving the first payment reflecting the change. *Id.* Other changes must be reported within 10 days after the client is aware of them. These include, but are not limited to, changes in... persons in the home... *Id.*, p. 11.

MDHHS presented Respondent's handwritten Assistance Application (Exhibit 1, pp. 14-28) signed by Respondent on [REDACTED]. The application stated that Respondent's signature was certification that Respondent reviewed and agreed with the application's Information Booklet; the Information Booklet, among other items, advises the client to report changes within 10 days.

MDHHS presented various tax records for Respondent's spouse from the [REDACTED] tax year (Exhibit 1, pp. 61-62). Respondent's spouse's was listed as an address undisputedly shared by Respondent.

MDHHS presented a CLEAR report (Exhibit 1, pp. 57-60) for Respondent's husband. The report listed a residential address for Respondent's spouse which matched Respondent's address (as listed on her application from 2013) in [REDACTED], Michigan; dates from [REDACTED] were associated with the address. The same address also appeared on a vehicle registration obtained in [REDACTED] for Respondent's spouse. An address in [REDACTED], Michigan was listed with associated dates from [REDACTED] 2012. An address in [REDACTED], Michigan was listed with associated dates from [REDACTED].

MDHHS presented case notes (Exhibit 1, p. 56) dated [REDACTED], drafted by the testifying agent. It was documented that the agent spoke with Respondent's specialist who stated that Respondent "confessed" that her husband has always been living in the home with Respondent.

Quarterly earnings records for Respondent's spouse (Exhibit 1, pp. 63-68). The records listed regular earnings for Respondent's spouse from the 1st quarter of [REDACTED] through the 2nd quarter of [REDACTED].

MDHHS presented a document related to the opening of a bank account (Exhibit 1, p. 69). The account was stated to be opened on [REDACTED]. Respondent's spouse signed the document and an address undisputedly matching Respondent's address was listed. Corresponding bank statements for the account (Exhibit 1, pp. 70-107) were also presented. MDHHS testimony indicated the account included regular transactions near Respondent's residential area (in [REDACTED], Michigan) and Respondent's spouse's work area (in [REDACTED], Michigan). It was noted Respondent and Respondent's spouse each had a debit card for the account (see Exhibit 1, p. 109).

MDHHS presented a document related to the opening of a bank account (Exhibit 1, p. 114). The account was stated to be opened on [REDACTED]. Respondent signed the

document and a [REDACTED], Michigan address was listed. Corresponding bank statements for the account (Exhibit 1, pp. 115-127) were also presented. MDHHS testimony indicated the account included regular transactions near Respondent's residential area and Respondent's spouse's work area. It was not disputed Respondent and Respondent's spouse each had a debit card for the account (see Exhibit 1, p. 109).

MDHHS presented a document related to the opening of a bank account (Exhibit 1, p. 108). The account was stated to be opened on [REDACTED]. Respondent's spouse signed the document and an address matching Respondent's address was listed. MDHHS presented corresponding bank statements (Exhibit 1, pp. 109-112) covering dates from [REDACTED]. MDHHS testimony indicated the account history included regular transactions near Respondent's residential area and Respondent's spouse's work area. It was not disputed Respondent and Respondent's spouse each had a debit card for the account (see Exhibit 1, p. 109).

A Documentation Record (Exhibit 1, p. 130) dated [REDACTED], was presented. It was documented that MDHHS staff called Respondent's spouse's employer. It was noted that a manager from Respondent's spouse's employer reported that she recalled a time in [REDACTED] when Respondent's spouse resided in the [REDACTED], Michigan area, but would travel to a different residence on weekends. The manager from Respondent's employer also reported Respondent's spouse later moved (presumably to avoid weekend commutes home).

A Documentation Record (Exhibit 1, p. 131) dated [REDACTED], was presented. The document and MDHHS testimony indicated the testifying regulation agent called Respondent's spouse. It was noted Respondent's spouse stated that he and Respondent remained married, that he was employed, and he previously lived with his parents until he could move his family closer to his workplace.

MDHHS contended Respondent's spouse continually used Respondent's residence as a primary address. MDHHS essentially conceded Respondent's spouse lived elsewhere during the work week, though he always returned to Respondent's address on weekends. Respondent essentially conceded the allegation, though she testified that her spouse would return at least twice per month. The MDHHS contention and Respondent's testimony were consistent with presented evidence. To determine if an OI occurred, it must be determined whether Respondent's spouse's circumstances justified inclusion with Respondent as a FAP benefit group member.

Spouses who are legally married and live together must be in the same group. BEM 212 (October 2011), p. 1. Living with means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. *Id.*, p. 2.

A person who is temporarily absent from the group is considered living with the group. *Id.* A person's absence is temporary if all of the following are true:

- His location is known.
- He lived with the group before his absence (newborns are considered to have lived with the group).
- There is a definite plan for his return.
- The absence has lasted or is expected to last 30 days or less.

Id.

Presented evidence tended to verify Respondent's spouse routinely returned to the residence shared with Respondent at least every 30 days. It is found Respondent's spouse was temporarily absent from Respondent's group during the time he spent in [REDACTED], Michigan during his work week. The temporary absence justifies inclusion in Respondent's FAP benefit group.

MDHHS presented a portion of Respondent's benefit issuance history (Exhibit 1, pp. 132-134). The history listed monthly issuances of [REDACTED] from [REDACTED] [REDACTED]. An issuance of [REDACTED] was listed for [REDACTED]. An issuance of [REDACTED] was listed for June 2013.

Various overissuance worksheets (Exhibit 1, pp. 135-142) were presented. The worksheets factored Respondent's spouse's income. An OI from [REDACTED] through [REDACTED] was calculated to be [REDACTED].

Presented worksheets notably did not credit Respondent with a 20% employment income credit. [MDHHS is to...] not allow the 20% earned income deduction when determining overissuances due to failure to report earned income.... BEM 556 (July 2013) p. 3. Thus, the OI was only correctly calculated if it is established that Respondent was at fault for her spouse not being factored in the FAP budgets.

Respondent testified that she was always forthright with MDHHS. Respondent testified she told her caseworker that her husband worked "downstate" and was not living in her residence. Respondent also testified that her caseworker responded by telling her that Respondent's spouse was not in the home enough to be considered a household or FAP benefit member. MDHHS responded by emphasizing that Respondent's reporting statements were more suggestive of a marriage separation rather than spending just the work week away from Respondent.

MDHHS presented a Redetermination Telephone Interview (Exhibit 1, pp. 29-32). The reporting document was signed by Respondent on [REDACTED]. Respondent listed only herself and two children as household members. Respondent wrote that her "ex-husband" paid her [REDACTED] month.

MDHHS presented Respondent's handwritten Assistance Application (Exhibit 1, pp. 33-52) signed by Respondent on [REDACTED]. Respondent listed only herself and two children as household members. Respondent wrote her household income was [REDACTED]

per month from a “friend.” Respondent wrote that her monthly shelter obligation was [REDACTED]/month.

MDHHS presented a letter from Respondent (Exhibit 1, pp. 54-55). The letter included a MDHHS date stamp of [REDACTED]. Respondent appeared to submit the letter in response to MDHHS’ request for Respondent’s employment information (MDHHS appeared to interpret Respondent’s [REDACTED] monthly income as employment-based). The letter stated Respondent’s friend did not want to provide his/her information and that Respondent was not employed.

During the hearing, Respondent was asked why she reported her spouse as a “former” spouse despite always being married to him. Respondent testified that there were times when she thought she would get divorced. Respondent testified that approximately four years ago her spouse had left the home, lived with another woman, and Respondent expected to get divorced. Respondent assumes any reporting of her spouse as a “former” spouse was done during that time.

Respondent testimony conceded she always had access to her spouse’s debit card. Respondent testimony conceded her spouse regularly paid her housing expenses. Respondent testimony conceded she always remained married to her spouse. Respondent’s testimony did not claim any sort of separation until asked specifically about her application statements. Overall, presented evidence was more indicative than not that Respondent misreported her spouse’s living situation.

Presented worksheets established Respondent improperly received [REDACTED] in over-issued FAP benefits due to her spouse (and his income) being excluded from the original FAP issuances. It is found that MDHHS established Respondent received an OI of [REDACTED] in FAP benefits. The analysis will proceed to determine if the OI was caused by an IPV.

The Code of Federal Regulations defines an IPV. Intentional program violations 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 the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system. 7 CFR 273.16 (c).

[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; see also 7 CFR 273(e)(6).

It has already been found that Respondent misreported her circumstances. The most reasonable motive for Respondent was to receive FAP benefits she was not entitled to receive. The finding was based on a preponderance of evidence, the burden of proof required to establish an OI. A higher burden exists to establish Respondent committed an IPV.

IPV is suspected when there is **clear and convincing** [emphasis added] 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. *Id.* 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).

In the above analysis, it was determined that Respondent probably misrepresented her spouse's living situation for the purpose of obtaining additional FAP benefits. Emphasis was given to Respondent's seemingly contradictory statements and consistent evidence that her spouse utilized Respondent's address during the OI period. Though presented evidence was probable that Respondent committed an IPV, the evidence was not clear and convincing.

The presented CLEAR report listed addresses away from Respondent's home during the alleged OI period. This consideration lessens the possibility of an IPV.

It is plausible a MDHHS case worker advised Respondent to not report her spouse as a resident because he did not live in the home a sufficient number of days. This consideration lessens the possibility of an IPV.

It is notable that MDHHS' evidence of Respondent supposedly confessing to a lie is hearsay evidence from a specialist who did not appear for the hearing. This consideration lessens the possibility of an IPV.

Though presented evidence of an OI was compelling, it is not found to be clear and convincing evidence of an IPV. Accordingly, it is found MDHHS may not proceed with disqualifying Respondent from benefit eligibility.

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 [REDACTED] in over-issued FAP benefits from [REDACTED]. The MDHHS request to establish an overissuance is **APPROVED**.

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 related to an OI of FAP benefits due to an unreported group member change for the months from [REDACTED]. The MDHHS request to establish Respondent committed an IPV is **DENIED**.

CG/hw



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) 335-6088; 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

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]