



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: January 4, 2017
MAHS Docket No.: 16-011208
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 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 8, 2016, 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 did not appear.

ISSUES

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

The second issue is whether MDHHS established Respondent received an overissuance of benefits.

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. Respondent's boyfriend was convicted of multiple drug-related felonies occurring after August 22, 1996 and before November 2012.

3. Respondent unintentionally misreported to MDHHS her boyfriend's history of drug-related felonies.
4. From February 2013 through February 2016 (excluding January 2014 and July 2014), Respondent received [REDACTED] in over-issued FAP benefits.
5. On [REDACTED], MDHHS requested a hearing to establish Respondent received an OI of [REDACTED] in FAP benefits from November 2012 through March 2016 due to an IPV.

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 unsigned Intentional Program Violation Repayment Agreement dated [REDACTED] (Exhibit 1, pp. 5-6). The repay agreement alleged Respondent received [REDACTED] in over-issued FAP benefits from November 2012 through March 2016. MDHHS alleged the IPV was based on Respondent's failure to report her children's father's multiple drug-related felonies.

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).

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).

[For FAP benefits,] people convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (July 2013), p. 1. An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both offenses occurred after August 22, 1996. *Id.*, p. 2.

MDHHS presented Respondent's handwritten Redetermination (Exhibit 1, pp. 11-14). The document was submitted by Respondent to MDHHS on [REDACTED]. The form was pre-printed with Respondent and 2 minor children as household members. Respondent handwrote her boyfriend and his 3 minor children as household members. Respondent answered, "No" in response to the questions, "Has anyone ever been convicted of a drug-related felony occurring after August 22, 1996?" and the follow-up question, "Convicted more than once?" (see Exhibit 1, p. 14).

MDHHS presented Respondent's electronically-submitted Assistance Application (Exhibit 1, pp. 26-55) signed by Respondent on [REDACTED]. Respondent listed herself, her boyfriend, and 5 minor children as household members. Concerning her boyfriend, Respondent answered, "No" in response to the question, "Convicted of a Drug Felony?" (see Exhibit 1, p. 39).

MDHHS presented Respondent's electronically-submitted Assistance Application (Exhibit 1, pp. 56-89) signed by Respondent on [REDACTED]. Respondent listed herself, her boyfriend, and 5 minor children as household members. Concerning her boyfriend, Respondent answered, "No" in response to the question, "Convicted of a Drug Felony?" (see Exhibit 1, p. 69).

MDHHS presented Respondent's electronically-submitted Assistance Application (Exhibit 1, pp. 90-118) signed by Respondent on [REDACTED]. Respondent listed herself, her boyfriend, and 5 minor children as household members. Concerning her boyfriend, Respondent answered, "No" in response to the question, "Convicted of a Drug Felony?" (see Exhibit 1, p. 102).

MDHHS presented Respondent's electronically-submitted Assistance Application (Exhibit 1, pp. 119-143) signed by Respondent on [REDACTED]. Respondent listed herself, her boyfriend, and 5 minor children as household members. Concerning her boyfriend, Respondent answered, "No" in response to the question, "Convicted of a Drug Felony?" (see Exhibit 1, p. 131).

MDHHS presented Respondent's FAP benefit history (Exhibit 1, p. 15). The history listed various FAP benefit issuances from October 2011 through March 2016.

MDHHS presented a Case Register of Actions (Exhibit 1, pp. 19-21). The documents summarized Respondent's boyfriend's previous encounter with a [REDACTED] County court. It was noted Respondent's boyfriend agreed to a plea to "CONTRL SUB POSSESS < 25 GRM" The charge is a felony under MCL 333.7403(2)(A)(5). An offense date of [REDACTED], was stated.

MDHHS presented a Case Register of Actions (Exhibit 1, pp. 22-25). The documents summarized Respondent's boyfriend's previous encounter with a [REDACTED] County court. It was noted Respondent's boyfriend agreed to a plea to "CONT SUB-DEL MFG MARIJUAN". The charge is a felony under MCL 333.7401(2)(D)(3). An offense date of [REDACTED], was stated.

Presented evidence established Respondent's boyfriend has 2 drug felonies which justify his disqualification from FAP eligibility. MDHHS also established Respondent misrepresented her boyfriend's drug history. It is less certain if Respondent's misreporting was purposeful.

Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015), p. 8. The client might be unable to answer a question about himself or another person whose circumstances must be known. *Id.* [MDHHS is to] allow the client at least 10 days (or other timeframe specified in policy) to obtain the needed information. *Id.*

Generally, a purposeful misreporting can be established by verifying written statements that contradict known facts. The present case is a somewhat atypical.

Persons should be fully aware of their own circumstances; thus, when a person misreports their own circumstances, an IPV can be inferred. When a person misreports circumstances of a group member, it typically involves circumstances (e.g. income) which should be known to the person undertaking the reporting; in such circumstances, an IPV can also be inferred. In the present case, it is questionable whether Respondent was aware of her boyfriend's drug-related felony.

If Respondent and her boyfriend shared a household at the time of his drug-related felony convictions, it is more likely that Respondent was aware of the convictions (and therefore purposely misreported them). Respondent's boyfriend's convictions occurred

in 2002 and 2005. Respondent's addition of her boyfriend as group members on the Redetermination from August 2012 is suggestive of a first-time reporting. The evidence was suggestive that Respondent and her boyfriend shared a household beginning August 2012- approximately 7 years after Respondent's boyfriend's last known drug felony conviction. This consideration supports finding that Respondent may not have been aware of her boyfriend's criminal record.

Generally, a non-married partner will have less knowledge of his/her partner's history than a married person. This consideration somewhat supports finding that it is not clear and convincing that Respondent was aware of her boyfriend's drug felony history.

It is found MDHHS failed to establish by clear and convincing evidence that Respondent committed an IPV. Accordingly, MDHHS may not impose a disqualification against Respondent. The analysis will proceed to determine if MDHHS established a basis for an OI.

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.

MDHHS presented FAP overissuance budgets (Exhibit 1, pp. 144-147) from November 2012 through December 2012 were presented. A group size of 3 was factored in the budget calculation. Presumably, MDHHS factored Respondent and her 2 minor children as group members. A [REDACTED] total OI was calculated. MDHHS cannot seek an OI because if Respondent was a group member, it is is not known how an OI occurred.

MDHHS presented a FAP overissuance budget (Exhibit 1, p. 208) from March 2016. A group size of 5 was factored. Presumably, the group size only included Respondent's and her boyfriend's 5 minor children while disqualifying Respondent's boyfriend (for having multiple drug-felony convictions) and Respondent (for misreporting the convictions). An OI of [REDACTED] was calculated. The OI cannot be accepted as there is no basis to disqualify Respondent.

MDHHS presented FAP overissuance budgets from January 2013 through February 2016. Each budget factored a group size of 6 persons. Presumably MDHHS factored Respondent's 5 minor children and disqualified either Respondent (for misreporting her boyfriend's criminal record) or her boyfriend (for having multiple drug-related felonies). It is of no matter whether MDHHS calculated the OI based on Respondent's or her boyfriend's disqualification as either way would result in the same OI. There was a separate problem with some of the budgets.

OI budgets for January 2013, January 2014, and July 2014 each calculated a "Monthly Benefit NA" which differed from the "Correct Benefit Amount". The "Monthly Benefit NA"

should match the budget's calculated net income with a chart in RFT 260 to determine the correct benefit issuance. There are no known circumstances to justify a difference between the "Monthly Benefit NA" and "Correct Benefit Amount" figures. MDHHS presented no evidence to justify the discrepancies. The OI for January 2013, January 2014, and July 2014 totaled [REDACTED].

Based on presented evidence, MDHHS justified an OI for benefit months from February 2013 through February 2016, excluding January 2014 and July 2014. The total OI established is [REDACTED].

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. The MDHHS request to establish an IPV against Respondent is **DENIED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish an OI of benefits in the months from November 2012 through January 2013, January 2014, July 2014, and March 2016. The MDHHS request to establish an OI is **PARTIALLY DENIED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent received an OI of FAP benefits from February 2013 through February 2016, excluding January 2014 and July 2014, totaling [REDACTED]. The MDHHS request to establish an overissuance is **PARTIALLY APPROVED**.

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]

Petitioner

[REDACTED]

Respondent

[REDACTED]