



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 5, 2017  
MAHS Docket No.: 16-014005  
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 19, 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 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.

2. As of March 2014, Respondent reported to MDHHS a FAP benefit group which included her then boyfriend.
3. Respondent's boyfriend began employment in April 2014.
4. Respondent failed to report to MDHHS that her boyfriend was employed and/or left her residence in March 2014.
5. Respondent received [REDACTED] in over-issued FAP benefits from June 2014 through August 2014, due to her failure to report her boyfriend's employment and/or his departure from her household.
6. Respondent's failure to report was not intentional.
7. On [REDACTED], MDHHS requested a hearing to establish Respondent committed an IPV and received an OI of [REDACTED] in FAP benefits for the months from June 2014 through August 2014.

### 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 (Exhibit 1, pp. 6-7) dated [REDACTED]. The unsigned agreement alleged Respondent received an over-issuance of [REDACTED] in FAP benefits from June 2014 through August 2014. The document, along with MDHHS testimony, alleged the OI was based on Respondent's failure to timely report employment 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 (April 2016), p. 11. Changes must be reported within 10 days of receiving the first payment reflecting the change. *Id.*

MDHHS presented Respondent's handwritten Assistance Application (Exhibit 1, pp. 12-31). Respondent's signature was dated April 24, 2013. Group members included Respondent, 3 minor children, and Respondent's boyfriend.

MDHHS presented Respondent's Redetermination (Exhibit 1, pp. 32-35). Respondent signature was undated, however, a MDHHS office date stamp sufficiently verified MDHHS received the form on [REDACTED]. Group members included Respondent, her boyfriend, and 3 minor children.

MDHHS presented Respondent's electronically submitted benefit application (Exhibit 1, pp. 36-50) signed and dated by Respondent on [REDACTED]. Listed household members included Respondent and 2 children.

MDHHS presented employment income documents (Exhibit 1, pp. 51-52). MDHHS testimony indicated the 2 pages were sent to, and completed by, Respondent's boyfriend's employer. Various pays from [REDACTED], were listed.

MDHHS presented a partial history of Respondent's FAP benefit issuances (Exhibit 1, p. 54). Monthly issuances of [REDACTED] were listed from May 2014 through August 2014.

An Issuance Summary (Exhibit 1, p. 55) and OI budgets (Exhibit 1, pp. 56-61) for the benefit months from May 2014 through August 2014 were presented. The OI budgets factored Respondent's boyfriend's employment income (as indicated on Exhibit 1, p. 52). The income was budgeted as "unreported" thereby depriving Respondent of a 20% employment income credit. Presented budgets calculated Respondent received an OI of [REDACTED] for each benefit month from June 2014 through August 2014.

Respondent testified she fought with her boyfriend on [REDACTED]. Respondent testified she remembers the date because it was her birthday. Respondent testified that her boyfriend moved out that day and never returned. Respondent testified she was unaware her boyfriend was employed once he moved out of her residence.

Given Respondent's testimony, presented evidence can establish an OI only if it is found that Respondent failed to report her boyfriend moved out from her residence. Respondent's testimony never denied the failure to report her boyfriend moving out; instead, Respondent testified she likely did not report her boyfriend moving because it was a particularly stressful time. Respondent's testimony essentially conceded the failure to report her boyfriend's departure from her residence. Based on Respondent's failure to report the change in household members, MDHHS cannot be faulted for continuing to issue FAP benefits to Respondent or for calculating an OI that included her then boyfriend's income.

It is found Respondent failed to timely report a change in household members as well as updating her boyfriend's income. It is also found MDHHS established Respondent's failure to report caused an OI of [REDACTED] in FAP benefits from June 2014 through August 2014. The analysis will proceed to determine if the OI was caused by an IPV by Respondent.

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).

DHS regulations list the requirements for an IPV. 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 (1/2011), 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).

MDHHS alleged Respondent failed to report household member and/or employment information of household members; this was established. MDHHS also contended the failure was purposeful and intentional.

Given presented evidence, two scenarios are plausible. Respondent presented a scenario whereby she accidentally failed to report a change in household members. Respondent testified her failure was caused by stress, in particular, from her battle with multiple sclerosis (MS).

Respondent presented medical documents from October 2016 (Exhibit A, pp. 1-4). The documents verified diagnoses of MS and chronic pain syndrome. A physician stated

that Respondent's MS diagnosis caused her to have a weak immune system and advised Respondent to stay away from persons with a contagious illness, even a cold.

Respondent's medical documents did not verify that Respondent had MS in 2014. Despite the lack of verification of when Respondent had MS, it is not far-fetched that Respondent was diagnosed 2 years earlier.

Generally, Respondent's testimony was credible. For example, Respondent testified that her boyfriend left her residence on [REDACTED]; Respondent did not submit any documents to MDHHS contradicting her testimony. Presented evidence also indicated that Respondent reported her boyfriend's departure to MDHHS on her very next required written submission. If Respondent's failure to report a change was accidental, an IPV cannot be established.

MDHHS did not present written documentation from Respondent which contradicted known facts. Generally, MDHHS will have difficulty in establishing a clear and convincing purposeful failure to report information when there is not written documentation from a respondent which contradicts known facts. Presented evidence was not persuasive in overcoming the general rule.

It is found MDHHS failed to clearly and convincingly establish that Respondent committed 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 failed to establish that Respondent committed an IPV based on unreported income and/or group members for the months from June 2014 through August 2014. The MDHHS request to establish Respondent committed an IPV is **DENIED**.

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 June 2014 through August 2014. The MDHHS request to establish an overissuance is **APPROVED**.

CG/hw



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**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

**Petitioner**

[REDACTED]

**DHHS**

[REDACTED]

[REDACTED]

**Respondent**

[REDACTED]