



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: February 10, 2017
MAHS Docket No.: 16-011312
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 January 19, 2017, 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 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) and Family Independence Program (FIP) benefits from the State of Michigan.
2. On multiple dates, Respondent misreported her household members to MDHHS.

3. Respondent's misreporting caused an OI of [REDACTED] in FAP benefits from June 2011 through January 2013.
4. Respondent's misreporting caused an OI of [REDACTED] in FIP benefits from June 2011 through January 2013.
5. Respondent's misreporting of household size was purposeful.
6. On [REDACTED], MDHHS requested a hearing to establish Respondent committed an IPV and received an OI of [REDACTED] in FAP benefits and [REDACTED] in FIP benefits from June 2011 through January 2013.

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).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. MDHHS (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131. 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 May 31, 2016. The document alleged Respondent received an over-issuance of [REDACTED] in FIP benefits and [REDACTED] in FAP benefits from June 2011 through January 2013. The repayment agreement, along with MDHHS testimony, alleged the OI was based on Respondent's reporting of a non-existent program group member.

MDHHS has policy to address misreporting. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015), p. 8.

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 Respondent's handwritten Assistance Application (Exhibit 1, pp. 12-31) signed by Respondent on [REDACTED] (resigned by Respondent on October 5, 2011). Respondent listed [REDACTED] as her son and household member. [REDACTED] date of birth was listed as [REDACTED].

MDHHS presented a Redetermination (Exhibit 1, pp. 32-35) signed by Respondent on [REDACTED]. Respondent listed [REDACTED] as her son and household member. Respondent wrote [REDACTED] date of birth as [REDACTED].

MDHHS presented Respondent's electronically-submitted Assistance Application (Exhibit 1, pp. 36-54) signed by Respondent on [REDACTED]. Respondent listed [REDACTED] as her son and household member. [REDACTED] date of birth was listed as [REDACTED].

MDHHS presented a Children's Protective Services Investigation Report (Exhibit 1, pp. 55- 72). It was noted that Child Protective Services (CPS) contacted Respondent several times in December 2012 for the purpose of meeting Respondent's son; all attempts were unsuccessful. In January 2013, it was noted that the Social Security number for [REDACTED] belonged to an adult with a different name. On [REDACTED], it was noted that Respondent informed CPS that her son was at her sister's house. It was noted that Respondent's sister reported receiving a text from Respondent asking her to tell CPS that she has seen [REDACTED] CPS told Respondent to fax documentation concerning [REDACTED] to CPS by the next day. On [REDACTED], Respondent told CPS she had [REDACTED] documentation and would be faxing it; it was noted that Respondent did not fax documentation. On [REDACTED], CPS scheduled a meeting specifically so that Respondent would bring [REDACTED] Respondent did not appear. It was also noted that SSA was unable to find information about [REDACTED] On [REDACTED], Respondent admitted to CPS that [REDACTED] did not exist.

MDHHS presented a portion of Respondent's FIP and FAP benefit issuance history (Exhibit 1, pp. 73-85). Various issuances from June 2011 through January 2013 were listed.

MDHHS presented an Issuance Summary (Exhibit 1, p. 86) and OI budgets (Exhibit 1, pp. 87-112) for the benefit months from June 2011 through January 2013. The OI budgets calculated Respondent's FAP eligibility based on exclusion of [REDACTED] as a group member. A [REDACTED] FAP benefit issuance was calculated.

MDHHS presented an Issuance Summary (Exhibit 1, p. 115) and OI budgets (Exhibit 1, pp. 116-119) for the benefit months from August 2012 through September 2012. The OI budgets calculated Respondent's FIP eligibility based on exclusion of [REDACTED] as a group member. A [REDACTED] benefit issuance was calculated. It was noted (see Exhibit 1, p. 114) that budgets for June 2011 through June 2012 were not performed because Respondent was not eligible for FIP benefits.

Presented evidence verified Respondent misreported household information. Presented evidence verified Respondent's misreporting resulted in OI of ██████ in FAP benefits and ██████ in FIP 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 apparent motive for Respondent's misreporting was to receive FAP and FIP 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).

Presented evidence verified Respondent repeatedly reported to MDHHS she lived with a child who did not exist. Presented evidence verified Respondent made considerable efforts to cover-up her misreporting, including attempting to conspire with her sister.

Respondent's brazen actions are only reasonably explainable by a purposeful intent to defraud MDHHS.

MDHHS clearly and convincingly established Respondent repeatedly misreported group and household members. Generally, a client's written statement which contradicts known facts is clear and convincing evidence of an IPV. Evidence was not presented to rebut the generality.

It is found MDHHS clearly and convincingly established that Respondent committed an IPV. Accordingly, it is found MDHHS may proceed with disqualifying Respondent from benefit eligibility.

The standard disqualification period is used in all instances except when a court orders a different period. BAM 725 (January 2016), p. 16. [MDHHS is to] apply the following disqualification periods to recipients determined to have committed an IPV... one year for the first IPV... two years for the second IPV[, and] lifetime for the third IPV. *Id.*

MDHHS testimony conceded Respondent had no previous IPV history. Thus, a 1 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 that Respondent committed an IPV based on receipt of ██████ in over-issued FIP benefits and ██████ in over-issued FAP benefits from June 2011 through January 2013. The MDHHS request to establish an overissuance and IPV (Respondent's 1st) is **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]