



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 17, 2017  
MAHS Docket No.: 16-013473  
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) benefits from the State of Michigan.
2. Respondent's ongoing FAP eligibility factored Respondent's son (born in 1993).

3. MDHHS failed to establish that Respondent's son (born in 1993) was an ineligible group member.
4. 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 August 2012 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. 5-6) dated [REDACTED]. The document alleged Respondent received an over-issuance of \$ [REDACTED] in FAP benefits from August 2012 through August 2014. The document, along with MDHHS testimony, alleged the OI was based on Respondent's failure to timely report that a FAP benefit group member moved out of Respondent's residence.

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 a handwritten Assistance Application (Exhibit 1, pp. 10-25). Respondent's application signature was dated [REDACTED]. Reported household members included Respondent and four children (the youngest of which was born in 1993).

MDHHS presented Respondent's State Emergency Relief application (Exhibit 1, pp. 26-45). Respondent's electronic signature was dated [REDACTED]. Reported household members included Respondent and four children (the youngest of which was born in 1993).

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, pp. 63-70) from September 2012 through August 2014.

MDHHS presented various OI budgets (Exhibit 1, pp. 74-97) from August 2012 through August 2014. The budgets calculated Respondent's FAP eligibility, in part, based on a group size of 3 persons (presumably by excluding Respondent's son who was allegedly ineligible due to not residing with Respondent).

MDHHS presented two different documents to establish Respondent's son (born in 1993) did not reside with Respondent during the alleged OI period. Both documents had imperfections.

MDHHS presented an IG-181 (Exhibit 1, p. 46). The document stated that Respondent's son (born in 1993) was receiving income from the military. The document coded Respondent's son as performing "active military duty."

It is debatable whether the IG-181 sufficiently verified military service for Respondent's son. No evidence was given concerning the reliability of the source of the document. For purposes of this decision, it will be found that the IG-181 established Respondent's son was in the military.

It is debatable whether being in the military necessarily means that Respondent's son did not live with Respondent. The IG-181 provided no residence information concerning Respondent's son. A code of "active military duty" is suggestive that Respondent was assigned to a military base, presumably outside of Michigan. For purposes of this decision, it will be found that the IG-181 established Respondent's son could not have lived with Respondent during his military service.

Most problematic is that the IG-181 failed to list any dates of military service. It is completely silent as to when Respondent's son was active military. Without dates of service, it is unknown which, if any, of Respondent's FAP benefit months would be affected. MDHHS contended that other evidence addressed Respondent's son's dates of military service.

MDHHS presented an Investigation Summary (Exhibit 1, pp. 3-4). The summary was electronically signed by a regulation agent with OIG on an unspecified date. The summary stated Respondent and the authoring regulation agent spoke on [REDACTED], [REDACTED] via telephone. The report went on to state that Respondent admitted that her son had been in the military since June 2012 and that he currently resides in [REDACTED].

An admission by Respondent that her son was in the military since June 2012 is not hearsay. The statement as presented in the Investigation Summary was hearsay.

For unstated reasons, the regulation agent who wrote the Investigation Summary did not appear for the hearing. Had MDHHS presented first-hand testimony that Respondent admitted to the dates of her son's military service, testimony concerning the statement would have been accepted as insightful. Without the first-hand testimony,

MDHHS is left with an allegation which is not authenticated nor particularly reliable in nature. Respondent's alleged statement is deemed to be hearsay and not admissible.

Without any reliable evidence of the dates of military service for Respondent's son, MDHHS cannot establish an OI. The analysis will proceed to determine if Respondent committed 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).

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).

It has already been found that MDHHS failed to establish an OI based on Respondent's alleged misreporting of benefit group members. Without establishment of an OI, an IPV cannot follow. It is found that MDHHS failed to establish that Respondent committed an IPV.

### **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 related to

misreported benefit group members. It is further found that MDHHS failed to establish that Respondent received an OI of [REDACTED] in FAP benefits from August 2012 through August 2014. The MDHHS request to establish Respondent received an OI or committed an IPV is **DENIED**.

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

**DHHS**

[REDACTED]

[REDACTED]

**Petitioner**

[REDACTED]

**Respondent**

[REDACTED]