



RICK SNYDER
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: March 3, 2017
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 did not appear.

ISSUES

The first issue is whether MDHHS established Respondent received an overissuance 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. Respondent's son was a FAP benefit group member with Respondent.

3. Respondent's son was convicted of multiple drug-related felonies occurring between [REDACTED].
4. As of [REDACTED], Respondent's son no longer lived with Respondent.
5. Respondent intentionally misreported to MDHHS that her son lived with her during a time he did not live with her.
6. From [REDACTED] Respondent received an OI of [REDACTED] in FAP benefits.
7. On [REDACTED], MDHHS requested a hearing to establish Respondent received an OI of [REDACTED] in FAP benefits from [REDACTED] due to an IPV.
8. MDHHS previously imposed an IPV against Respondent.

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 dated [REDACTED] (Exhibit 1, pp. 5-6) alleging Respondent received [REDACTED] in over-issued FAP benefits from [REDACTED] through [REDACTED]. MDHHS alleged the OI was based on a group member's drug-related felony history.

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.

[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 a Judgment of Sentence (Exhibit 1, p. 27). The judgment stated Respondent's son was convicted of "POSS NARC/COKE <25 GRM" on [REDACTED]. The charge is a felony under MCL 333.7401(2)(A)(v). The judgment was signed on [REDACTED].

MDHHS presented a Judgment of Sentence (Exhibit 1, p. 26). The judgment stated Respondent's son was convicted of "DELY/MFG NARC/COCAINE <50 GRM" on [REDACTED]. The charge is a felony under MCL 333.7401(2)(A)(iv). The judgment was signed on [REDACTED].

MDHHS presented a portion of Respondent's FAP benefit history (Exhibit 1, pp. 28-29). FAP benefits issuances to Respondent from October 2014 through June 2015 totaled \$[REDACTED].

MDHHS presented an Issuance Summary (Exhibit 1, p. 30) and OI budgets (Exhibit 1, pp. 31-48) for the benefit months from [REDACTED]. The OI budgets calculated Respondent's FAP eligibility based on exclusion of her son as a group member. A "correct" FAP benefit issuance of [REDACTED] was calculated for the alleged OI period.

Presented evidence established Respondent's son was convicted of multiple drug-related felonies which would have disqualified Respondent's son from FAP eligibility. It is found that Respondent received an OI of [REDACTED] in FAP benefits during the alleged OI period. 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).

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 did not allege Respondent misrepresented her son's drug-related felony history. MDHHS alleged Respondent committed an IPV based on Respondent failing to report her son's departure from her home.

MDHHS presented a Redetermination (Exhibit 1, pp. 10-15). Respondent's signature was dated [REDACTED]. MDHHS presented the form solely for the purpose of establishing that Respondent was informed of requirements to report changes within 10 days.

The presented Redetermination does not appear to advise clients of a reporting requirement. It is presumed that as a FAP benefit recipient, Respondent was aware of the requirement to report changes in group size despite the lack of language in the presented Redetermination.

MDHHS presented Respondent's case specialist notes (Exhibit 1, pp. 17-18). It was noted on [REDACTED], that Respondent called to report that her son was released from prison, resided with her since [REDACTED], and bought and prepared food with Respondent.

MDHHS presented Respondent's son's OTIS page dated [REDACTED]. OTIS is understood to be a website maintained by MDOC offering public information on criminal offenders. Respondent's son was listed as an active parole absconder since [REDACTED]
[REDACTED]

MDHHS presented an email chain between the testifying regulation agent and a MDOC employee from [REDACTED]. The MDOC employee stated Respondent's son reported living at an address since [REDACTED] the address was different from the address reported by Respondent. The MDOC employee staff member further stated that he did not think that Respondent's son's household included his mother. It was stated that Respondent reported on [REDACTED] that she did not live with her son, but instead lived with a different parolee, her cousin. A subsequent email to the testifying regulation agent indicated that Respondent's son reported to MDOC that he moved to an address different from Respondent on [REDACTED].

MDHHS presented a second email chain between the testifying regulation agent and a MDOC employee from [REDACTED]. The MDOC employee signed his emails as a parole

officer. The parole office stated that Respondent reported moving from his mother's address on [REDACTED].

Presented evidence sufficiently established that Respondent made contradictory statements during the OI period concerning her son's address. If Respondent's statements were only considered, the evidence would be insufficient to establish where Respondent's son lived during the alleged OI period. When factoring Respondent's son's statements to MDOC, the evidence clearly and convincingly established that Respondent's son did not live with Respondent at least from [REDACTED]
[REDACTED]

MDHHS presented a Semi-Annual Contact Report (Exhibit 1, pp. 19-22). Respondent's signature was dated [REDACTED]. The document listed Respondent's parolee son as a household member who bought and prepared food with Respondent.

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.

The presented Semi-Annual Contact Report clearly and convincingly established Respondent misreported to MDHHS her 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 recognized that Respondent's misreporting occurred towards the end of the OI period; this does not affect an IPV determination for 2 reasons. First, an IPV is justified for any fraud resulting in any OI. Secondly, Respondent's written misreporting renders it highly probable that Respondent purposely failed to report her son's departure from her residence back in [REDACTED]

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 presented Respondent's disqualification history (Exhibit 1, p. 49). A previous IPV concerning FAP was imposed from [REDACTED], through [REDACTED]. The previous IPV justifies imposing a 24 month IPV penalty.

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 [REDACTED] in FAP benefits from [REDACTED]. The MDHHS request to establish an overissuance and IPV (Respondent's 2nd) 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]
[REDACTED]
[REDACTED]

[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]