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GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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Date Mailed: March 17, 2017  
MAHS Docket No.: ██████████  
Agency No.: ██████████  
Petitioner: ██████  
Respondent: ██████████

**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 ██████████ from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by ██████ ██████, regulation agent, with the Office of Inspector General. Respondent appeared and was not represented.

**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. From ██████████, Respondent and her mother were members of the same household.

3. From [REDACTED] Respondent did not report to MDHHS that she was a member of her mother's household.
4. From [REDACTED], Respondent was under 22 years of age.
5. Respondent did not intentionally misreport to MDHHS her household members.
6. 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 [REDACTED].

### 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 (Exhibit 1, pp. 5-6) dated [REDACTED]. The document alleged Respondent received an over-issuance of [REDACTED] in FAP benefits from [REDACTED] through [REDACTED]. The document, along with MDHHS testimony, alleged the OI was based on a change in household members.

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.

Bridges will help determine who must be included in the Food Assistance Program (FAP) group prior to evaluating the nonfinancial and financial eligibility of everyone in the group. BEM 212 (July 2014), p. 1. Food Assistance Program group composition is established by determining all of the following (see *Id.*): who lives together, the relationship(s) of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the person(s) resides in an eligible living situation. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. *Id.*

MDHHS presented Petitioner's application for FAP benefits (Exhibit 1, pp. 10-23) dated [REDACTED]. The application listed Petitioner as a household member. No other household members were listed. Respondent's birth month was reported to be [REDACTED]

MDHHS presented a Notice of Case Action (Exhibit 1, pp. 24-27) dated [REDACTED]. The notice approved Respondent for FAP benefits, effective [REDACTED] in part, based on a group size of 1 person.

MDHHS presented Respondent's Redetermination (Exhibit 1, pp. 30-35). Respondent's signature was dated [REDACTED]. Respondent listed herself as the only household member.

MDHHS presented a Case Comments- Summary (Exhibit 1, p. 36). The document listed case notes for Respondent's mother's FAP benefit case. It was noted on [REDACTED], Respondent's mother's specialist stated that he/she spoke with Respondent who reported that she "has always lived in the home." It was also documented that neither Respondent nor her mother listed each other as household members.

Respondent testified that she and mother lived in a residence which suffered a fire. Petitioner testified she and her mother had to live in another residence while the house underwent repair. Respondent testified that they both lived at a residence, but problems with her mother caused Respondent to move away and live with her aunt (Respondent's mother's sister). Respondent testified that at some later date, her mother was unable to financially support herself causing her to move back in with her sister and Respondent.

Respondent's testimony was not particularly detailed nor credible. It was at least first-hand. The statements from Respondent's mother's specialist were hearsay. This consideration supports rejecting the statements as evidence concerning establishing if Respondent lived with her mother during the alleged OI period. MDHHS presented better evidence to verify that Respondent and her mother shared an address.

MDHHS presented an address history for Respondent's case (Exhibit 1, p. 38). The only address listed in Respondent's case history was Respondent's current address.

MDHHS presented an address history for Respondent's mother's case (Exhibit 1, p. 37). Respondent's address was listed as a physical address for Respondent's mother since [REDACTED]. From 2010 until [REDACTED], the same address was listed as a mailing address; no residential address was listed for the same timeframe.

Presented case history for Respondent and her mother was highly indicative that they shared a residence during the alleged OI period. It was not disputed that Respondent was under 22 years of age throughout the alleged OI period. Thus, MDHHS appears to

have established a basis for an OI. Assuming Respondent and her mother lived together throughout the OI period, MDHHS must still establish an amount of OI.

MDHHS presented Respondent's FAP benefit history (Exhibit 1, pp. 39-41). Issuances from [REDACTED] totaled [REDACTED]

It was not disputed that if Respondent lived with her mother, Respondent would have been eligible to receive FAP benefits as part of her mother's case. Thus, a proper FAP benefit calculation would have to factor Respondent's and her mother's FAP eligibility as a group against the combined benefits issued to Respondent and her mother. MDHHS presented no such calculation. Without such a calculation, no FAP benefit OI can be discerned.

It is found that MDHHS failed to establish an OI. The analysis will proceed to determine if Respondent's reporting amounted to 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).

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.

Generally, an intent to defraud is motivated by financial gain. In the OI analysis, it was found that MDHHS failed to establish an OI. Without knowledge of the specific financial gain (if any) that occurred, it is more difficult to gauge if Respondent's apparent failure to accurately report group members was motivated by fraud. This consideration supports rejecting that an IPV occurred.

It is known that, generally, clients can receive more FAP benefits as separate group members than as combined members. Though an OI cannot be calculated, it could be assumed that an OI occurred. This consideration supports finding an IPV if presented evidence justified misrepresentation by Respondent.

Respondent's application from [REDACTED] could be reasonably considered as a misreporting. Such a finding requires accepting that Respondent's mother lived at the same address. Respondent's mother's case history verified Respondent used Respondent's address as a mailing address at the time, though a residential address was not provided. It is conceivable that Respondent's mother utilized Respondent's address to receive mail, but not as a physical address.

Respondent's Redetermination from [REDACTED] did not list her mother as a group member. Presented case histories verified Respondent and her mother shared the same household at that time. Respondent's failure to list her mother can be tempered by specialist notes on the form which list Respondent's mother's name as a household member; presumably, the specialist's statements were based on Respondent's statements during a FAP interview. Respondent's willingness to disclose her mother's name is indicative of a less than fraudulent intent.

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 received an OI [REDACTED] in FAP benefits from [REDACTED]. It is further found that MDHHS failed to establish that Respondent committed an IPV. The MDHHS request to establish an OI and IPV against Respondent is **DENIED**.

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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]  
[REDACTED]

[REDACTED]

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED]