



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 17, 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 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 from the State of Michigan.
2. On [REDACTED], Respondent and her spouse were married.
3. As of [REDACTED], Respondent and her spouse lived together.

4. Respondent misreported to MDHHS that she did not live with her spouse.
5. From [REDACTED], MDHHS issued FAP benefits to Respondent and her spouse based on Respondent's misreporting.
6. From [REDACTED], Respondent and her spouse received [REDACTED] in over-issued FAP benefits
7. Respondent's misreporting was intentional.
8. On [REDACTED], MDHHS requested a hearing to establish Respondent committed an IPV and received an OI of [REDACTED] in FAP benefits 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 unsigned Intentional Program Violation Repayment Agreement (Exhibit 1, pp. 6-7) dated [REDACTED]. The document alleged Respondent received an over-issuance of [REDACTED] in FAP benefits from [REDACTED]. The document, along with MDHHS testimony, alleged the OI was based on factoring the improper benefit group.

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 assist you in determining 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 (October 2011), p. 1. FAP 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.

Spouses who are legally married and live together must be in the same group. BEM 212 (October 2011), p. 1. Living with means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. *Id.*, p. 2.

MDHHS presented Respondent's spouse's Redetermination (Exhibit 1, pp. 12-15). Respondent's spouse's signature was undated, but a submission date of [REDACTED], was stamped on the cover page. Respondent's spouse listed only himself as a group member. Respondent's spouse's reported address was different from Respondent's current address.

MDHHS presented Respondent's Redetermination (Exhibit 1, pp. 16-19). Respondent's signature was dated [REDACTED]. Respondent listed only herself as a group member. Respondent's reported address was her current address.

MDHHS presented a Certificate of Marriage (Exhibit 1, p. 34). The certificate stated Respondent and her spouse were married on [REDACTED]

MDHHS presented Respondent's spouse's Mid-Certification Contact Notice (Exhibit 1, pp. 24-26). Respondent's spouse's signature was dated [REDACTED]. Respondent's spouse listed only himself as a group member. Respondent's spouse stated he was homeless. A mailing address matching Respondent's current address was listed.

MDHHS presented Respondent's spouse's Redetermination (Exhibit 1, pp. 20-23). Respondent's spouse's signature was dated [REDACTED]. Respondent's spouse listed only himself as a group member. Respondent's spouse stated he was homeless. A mailing address matching Respondent's address was listed.

MDHHS presented Respondent's Redetermination (Exhibit 1, pp. 28-31). Respondent's signature was undated, but the specialist signed as a witness to Respondent's signature on [REDACTED]. Respondent listed only herself as a group member. Respondent's reported address was her current address. Notes from Respondent's specialist stated that Respondent reported that her spouse was homeless, did not live with her, and that he lived from "house to house." It was also noted that her spouse used her address as a mailing address.

Various notes from Respondent's spouse's specialist (Exhibit 1, p. 32) dated [REDACTED] were presented. It was documented that Respondent's spouse's specialist stated "everytime [sic] I call the phone he is at the house regardless of the time of day." It was noted Respondent's spouse reported that he slept in a barn at another property.

Various notes from Respondent's spouse's specialist (Exhibit 1, p. 33) dated [REDACTED], were presented. It was documented that Respondent's and her spouse's FAP benefit case were merged into one case.

Various notes from Respondent's spouse's specialist (Exhibit 1, p. 33) dated [REDACTED], were presented. It was documented that Respondent's spouse reported he buys and prepares food with Respondent and stays with his spouse during the day. It was noted that Respondent's spouse reported that he sleeps in a barn because he is unable to live with Respondent due to a criminal history. Hearing testimony indicated living with a felon potentially endangers Respondent's subsidized housing assistance.

Presented evidence verified Respondent and her spouse were married throughout the alleged OI period. Presented evidence verified Respondent and her spouse shared a mailing address throughout the alleged OI period. Presented evidence verified Respondent and her spouse shared living quarters throughout the alleged OI period. The evidence was highly suggestive that Respondent and her spouse lived together.

Respondent's spouse's claim that he slept in a barn every night is a theoretically possible scenario. It is also highly improbable that Respondent's spouse would spend his waking hours in Respondent's home, only to travel elsewhere to sleep in a barn.

It is found Respondent and her spouse lived together during the alleged OI period. The analysis will proceed to determine if an OI occurred.

MDHHS presented various OI worksheets and FAP issuance tables (Exhibit 1, pp. 40-71) for benefit months from [REDACTED]. The worksheets calculated FAP benefit OIs based on Respondent and her spouse being members of the same FAP benefit group against FAP benefits issued separately to Respondent and her spouse. Presented Claim Summary documents (Exhibit 1, pp. 37-39) listed a total OI of [REDACTED] was calculated from [REDACTED].

It is found MDHHS properly calculated Respondent and her spouse received an OI of [REDACTED] in FAP benefits from [REDACTED]. 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).

[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 alleged Respondent misreported and/or failed to update her living arrangement. MDHHS policy supports the allegations.

Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015), p. 8. 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.

It has already been found that Respondent and her spouse lived together during a time Respondent's FAP eligibility was based on Respondent and her spouse not living together. The findings are highly indicative that Respondent committed an IPV. Consideration was given to whether Respondent may not have intentionally misreported her living arrangement to MDHHS. The consideration was rejected based on Respondent's spouse's written statement.

MDHHS presented a signed statement from Respondent's spouse (Exhibit 1, p. 35). Respondent's spouse wrote that he "lived here with" Respondent since marrying her.

Evidence tended to verify that Respondent was aware of reporting requirements and that she understood reporting requirements. It is found MDHHS established Respondent intentionally misreported her household members to MDHHS. Accordingly, it is found MDHHS established that Respondent committed an IPV.

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 did not allege Respondent previously committed an IPV. 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 FAP benefits for the period from ██████ ██████ ██████. 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]
[REDACTED]

[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]