



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: July 20, 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 (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), Family Independence Program (FIP), and Child Development and Care (CDC) benefits from the State of Michigan.

2. From [REDACTED], Respondent received FAP, FIP, and CDC benefits, in part, based on a household that did not factor Respondent's spouse.
3. MDHHS failed to establish that Respondent's spouse was in Respondent's household from [REDACTED].
4. On [REDACTED] MDHHS requested a hearing to establish that Respondent received an OI of [REDACTED] in FAP benefits, [REDACTED] in FIP benefits, and [REDACTED] in CDC benefits

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).

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. MDHHS administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020. 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 the following: [REDACTED] in FAP benefits, [REDACTED] in FIP benefits, and [REDACTED] in CDC benefits. The OI allegedly occurred from [REDACTED]. The document, along with MDHHS testimony,

alleged the OI was based on Respondent's failure to report her spouse's presence and income in the household.

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.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (May 2012), p. 7. Changes [in income] must be reported within 10 days of receiving the first payment reflecting the change. *Id.* Other changes [besides income] must be reported within 10 days after the client is aware of them. *Id.*, p. 12. These include, but are not [bold lettering removed] limited to, changes in... persons in the home.... *Id.*

MDHHS presented Respondent's application for FAP and FIP benefits (Exhibit 1, pp. 12-27). Respondent's and Respondent's spouse's handwritten signatures were witnessed by MDHHS on [REDACTED]. Reported household members included Respondent, her spouse, and a minor child (also Respondent's spouse's child). MDHHS did not allege the application reported misinformation.

MDHHS presented Respondent's application for FAP benefits (Exhibit 1, pp. 28-43). Respondent's handwritten signature was dated [REDACTED]. Reported household members included Respondent, her spouse, and a minor child (also Respondent's spouse's child). MDHHS did not allege the application reported misinformation.

MDHHS presented Respondent's CDC application (Exhibit 1, pp. 44-48). Respondent's handwritten signature was dated [REDACTED]. Reported household members included Respondent and 2 minor children. Respondent's spouse was not listed as a household member.

MDHHS presented documentation from TheWorkNumber.com (Exhibit 1, pp. 57-60) for Respondent's spouse. Information was noted to be current as of [REDACTED]. Various biweekly pays from [REDACTED], were listed.

MDHHS presented documentation from TheWorkNumber.com (Exhibit 1, pp. 61-66) for Respondent's spouse. Information was noted to be current as of [REDACTED]. Various biweekly pays from [REDACTED], through [REDACTED], were listed.

MDHHS presented various documents including a copy of Respondent's driver's license (Exhibit 1, p. 52), Work First notes concerning Respondent's case (Exhibit 1, p. 49), Respondent's spouse's child support history (Exhibit 1, p. 51), and a Demand for Possession (Exhibit 1, p. 56). MDHHS did not explain the relevance of the documents.

MDHHS presented documentation of Respondent's FAP, FIP, and CDC history (Exhibit 1, pp. 87-90, 97-104). MDHHS alleged all benefits issued during the alleged OI period wrongly factored Respondent's spouse as a non-household member.

MDHHS alleged Respondent received an OI of FAP, FIP, and CDC because Respondent's spouse should have been factored as a household member. MDHHS seemed to justify the allegation based on Respondent's CDC application which reported her spouse was not in the home a few months after Respondent was reported as a household member. Given presented evidence, the most logical conclusion for the difference is that Respondent's spouse moved out of Respondent's home shortly before Respondent applied for CDC benefits. MDHHS literally presented no evidence that Respondent's spouse lived with Respondent during the alleged OI period.

It is found that MDHHS failed to establish an OI of FAP, FIP, and CDC benefits. The analysis will proceed to consider the IPV allegations.

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 was already found that MDHHS failed to establish an OI of FAP, FIP, or CDC benefits. Without an OI of benefits, a finding of 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 received an OI of FAP, FIP, and/or CDC benefits from [REDACTED] related to household composition. It is further found that MDHHS failed to establish that Respondent committed an IPV. The MDHHS requests to establish that Respondent received an OI of benefits and committed an IPV are **DENIED**.

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])

Petitioner

[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]