



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: August 2, 2017
MAHS Docket No.: [REDACTED] 17-001397
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

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) benefits from the State of Michigan.
2. On [REDACTED], Respondent and her spouse were married.
3. MDHHS did not establish that Respondent received an OI of FAP benefits from [REDACTED] due to a failure to report her marriage and a household that included her spouse.

4. 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 an incorrect 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 application for FAP benefits (Exhibit 1, pp. 19-40). Respondent's electronic signature was dated [REDACTED]. The application reported Respondent and her 6 children as household members. Respondent's 6th child had a birthdate in [REDACTED]. Respondent's 6th child also shared the last name of

Respondent's spouse. SSI for a child was listed as the household's only income. MDHHS did not allege the application reported misinformation.

MDHHS presented Respondent's application for State Emergency Relief (Exhibit 1, pp. 41-64). Respondent's electronic signature was dated [REDACTED]. The application reported Respondent and her 6 children as household members. Respondent reported that she was never married. MDHHS alleged Respondent purposely failed to report her marriage and her spouse as a household member.

MDHHS did not present documentation verifying Respondent's date of marriage. MDHHS testimony indicated they possessed a marriage certificate for Respondent and a date of marriage on [REDACTED], was stated.

MDHHS presented a CLEAR report (Exhibit 1, pp. 65-74). The report associated Respondent and Respondent's spouse with various overlapping addresses and dates.

MDHHS presented an Employee Wage History by SSN (Exhibit 1, p. 75) for Respondent's spouse. Various earnings were listed from the 1st quarter of 2014 through the 3rd quarter of [REDACTED].

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, p. 76). Issuances of [REDACTED]/month were listed from [REDACTED].

MDHHS alleged Respondent's FAP issuances from the alleged OI period improperly failed to factor Respondent's spouse and his income; the allegation was supported. Evidence of the precise OI was less supported.

FAP-OI budgets (Exhibit 1, pp. 77-82) and a corresponding Issuance Summary (Exhibit 1, p. 83) from [REDACTED] were presented. The OI budgets factored Respondent's FAP issuances as listed on presented documents. The OI budgets factored a third of Respondent's spouse's quarterly earnings as listed on the presented wage history documentation. Employment income was factored as unreported. Employment income and SSI were counted as Respondent's income. The budgets factored a group of 6 persons with Respondent excluded due to a child support disqualification. A total OI of [REDACTED] was calculated. There were many irregularities in the presented OI budgets.

Respondent's reporting documents indicated a household of 7 persons (Respondent and her 6 children). If Respondent was disqualified due to child support, then OI budgets would be expected to factor a group size of 7 persons (Respondent's spouse and 6 children). MDHHS only factored a group size of 6 persons in OI budgets. It is possible that one of the members was excluded for unknown reasons. Unfortunately, presented OI budgets did not include the names of eligible FAP-group members. Presented evidence was indicative that Respondent's spouse was improperly excluded from the OI budgets.

Presented OI budgets factored Respondent's spouse's income as Respondent's income. The error is harmless as long as all group members are included in the budget. It must be wondered if MDHHS applied Respondent's spouse's income to Respondent because Respondent's spouse was not factored as a group member. This consideration is suggestive that OI budgets wrongly excluded Respondent's spouse as a group member.

It is notable that a group size of 6 persons is potentially eligible for a maximum FAP issuance of [REDACTED] (see RFT 260 (October 2016), p. 1). Respondent's original FAP issuances happen to be for [REDACTED]/month. Thus, it can be deduced that Petitioner's original FAP issuances factored a group size of no less than 6 persons. Adding Respondent's spouse as a member should justify a group size of no less than 7 persons.

Given presented evidence, an OI cannot be found to be properly calculated. Thus, MDHHS will be denied establishment of an OI. The analysis will proceed to consider the IPV allegation.

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).

For purposes of this decision, it will be accepted that Respondent married her spouse on [REDACTED]. For purposes of this decision, it will be accepted that Respondent lived with her spouse no later than her date of marriage (an earlier living-together date is certainly possible).

Respondent's SER application from [REDACTED] failed to report her marriage. The SER application does not definitively establish Respondent failed to otherwise report her marriage to MDHHS, but it is highly indicative of a fraudulent intent.

Despite evidence of a fraudulent intent, it has already been found that MDHHS failed to establish an OI by Respondent. A finding of IPV can only follow establishment of an OI. Without establishment of an OI, a finding of an IPV may not follow. It is found that MDHHS failed to establish an IPV by Respondent.

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 unreported group members. It is further found that MDHHS failed to establish Respondent received an OI of [REDACTED] in FAP benefits from [REDACTED]. The request to establish an IPV and OI is **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]

Petitioner

[REDACTED]

Respondent

[REDACTED]