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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

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 2, 2017
MAHS Docket No.: [REDACTED] 17-002357
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 appeared and was unrepresented. [REDACTED], Respondent's spouse, testified on behalf of Respondent.

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 and Respondent's spouse were ongoing Food Assistance Program (FAP) benefit recipients.
2. Respondent's spouse was convicted of multiple drug-related felonies occurring between [REDACTED].
3. Respondent did not intentionally misreport to MDHHS her spouse's history of drug-related felonies.

4. From [REDACTED], Respondent received an OI of [REDACTED] in FAP benefits.
5. On [REDACTED], MDHHS requested a hearing to establish Respondent received an OI of [REDACTED] in FAP benefits from [REDACTED] due to an IPV.

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 February 9, 2017 (Exhibit 1, pp. 5-6) alleging Respondent received [REDACTED] in over-issued FAP benefits from [REDACTED]. MDHHS alleged the OI was based on Respondent's spouse's history of drug felonies.

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 [REDACTED]. *Id.*, p. 2.

MDHHS presented a Case Register of Actions (Exhibit 1, pp. 10-12) from a Michigan county court. The document indicated Respondent's spouse was convicted of "Controlled Substances – Delivery / Manufacture (narcotic or Cocaine) Less Than 50 Gr" on [REDACTED]. The crime is a felony under MCL 333.7401(2)(a)(iv).

MDHHS presented a Case Register of Actions (Exhibit 1, pp. 13-14) from a Michigan county court. The document indicated Respondent's spouse was convicted of "Controlled Substances – Delivery / Manufacture (narcotic or Cocaine) Less Than 50 Gr" on [REDACTED]. The crime is a felony under MCL 333.7401(2)(a)(iv).

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, pp. 29-30) from [REDACTED] and a corresponding worksheet (Exhibit 1, p. 31). The worksheet calculated Respondent's OI based on removal of Respondent's spouse from Respondent's original FAP benefit group. An OI totaling [REDACTED] was calculated.

Presented evidence established Respondent's spouse was convicted of multiple drug-related felonies which would have disqualified him from FAP eligibility during the alleged OI period. It is found that Respondent received an OI of [REDACTED] in FAP benefits. 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 presented Respondent's Redetermination for FAP benefits (Exhibit 1, pp. 15-22). Respondent's electronic signature was dated [REDACTED]. Respondent's spouse was a reported household member. Respondent answered "No" in response to the question, "Has anyone ever been convicted of a drug-related felony occurring after [REDACTED]?" (see Exhibit 1, p. 20).

MDHHS presented Respondent's Redetermination for FAP benefits (Exhibit 1, pp. 23-28). Respondent's handwritten signature was undated; it can be deduced the signature occurred between [REDACTED] (the form's creation date) and [REDACTED] (the date MDHHS received the form). Respondent reported her spouse as a household member. Respondent checked "No" in response to a question asking, "Has anyone ever been convicted of a drug-related felony occurring after [REDACTED]?" (see Exhibit 1, p. 27).

The presented reporting documents contained boilerplate language stating the client's signature was certification, subject to perjury, that all reported information on the document was true. Presented evidence was not indicative that Respondent did not understand the reporting requirements.

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.

Presented evidence established that Respondent misreported information by reporting her spouse had an absence of drug-felony convictions since [REDACTED]. Generally, a client's written statement which contradicts known facts resulting in an OI is clear and convincing evidence of an IPV.

Respondent testified she may have misreported information, but that was not her intent. Respondent testified she was aware that her spouse had a felony from before 1996. Respondent testified that she was unaware of a felony from [REDACTED]. Respondent testified that she knew her husband in [REDACTED] but that she did not begin dating him until [REDACTED].

Respondent's spouse testified that he only told his wife of the felony from the [REDACTED] because she already knew about it. He testified that his subsequent felonies never came up in conversation. He further testified that his wife is now aware of his criminal past, but that he has since changed his lifestyle.

Respondent's and her spouse's testimony was unverified, though it is not known what evidence could have verified the testimony. Generally, the testimony was credible and not inconsistent with any known information. For example, there was no evidence that Respondent and her spouse had children-in-common from before Respondent's dates of convictions.

It is found that Respondent did not intentionally misreport information to MDHHS. Without an intent to misreport, an IPV cannot 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 established that Respondent received an OI of [REDACTED] in FAP benefits for the period from [REDACTED]. The MDHHS request to establish an overissuance is **APPROVED**.

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 an OI of FAP benefits due to unreported drug-related felonies. The MDHHS request to establish that Respondent committed an IPV 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]