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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 21, 2017
MAHS Docket No.: 17-004792
Agency No.: [REDACTED]
Petitioner: OIG
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

1. The first issue is whether MDHHS established Respondent received an overissuance (OI) of benefits.
2. 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 at least [REDACTED], Respondent lived with her spouse.

3. From at least [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED], Respondent received employment income from an employer.
4. Respondent clearly and convincingly failed to report living with her spouse and her spouse's employment income.
5. Respondent received an OI of \$ [REDACTED] in FAP benefits from [REDACTED] [REDACTED] as a result of unreported employment income and 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].
7. Respondent has no history of IPV's.

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. 5-6) dated [REDACTED]. The document alleged Respondent received an overissuance of \$ [REDACTED] in FAP benefits from [REDACTED]. The document, along with MDHHS testimony, alleged the OI was based on Respondent's failure to timely report employment income from an unreported group member.

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.*

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.

For an OI to be established, MDHHS must establish that Respondent and her spouse lived together during the OI period. MDHHS presented various documents to support the allegation.

MDHHS presented Respondent's application for FAP benefits (Exhibit 1, pp. 11-46). Respondent's electronic signature was dated [REDACTED]. Respondent listed herself and [REDACTED] minor children as group members. Respondent's youngest child's father was listed as an "absent" father. The only reported income was child support for Respondent's youngest child. MDHHS did not allege that the document contained misinformation.

MDHHS presented Respondent's lease (Exhibit 1, pp. 53-57). The lease covered a term from [REDACTED]. Respondent and her spouse were listed as tenants.

MDHHS presented a Redetermination (Exhibit 1, pp. 47-52). Respondent's handwritten signature was dated [REDACTED]. The document listed Respondent and her [REDACTED] minor children as household members (the [REDACTED] youngest having Respondent's spouse's last name). The document included Respondent's handwritten statement that her husband cosigned for her new residence, but that he did not live with her.

Respondent's Redetermination statement is a scenario which could plausibly explain her spouse's name on a lease despite Respondent not living with her spouse. Alternatively, Respondent's statement could have been a purposeful misreporting in anticipation of MDHHS' questioning of why her spouse appeared on a lease, but not as a reported household member.

MDHHS presented [REDACTED] documents (Exhibit 1, pp. 61-70) for an account bearing the name of Respondent and her spouse. Various posts included Respondent's statement about her snoring husband and a preference for a busy man rather than a poor one. The [REDACTED] statements ranged from [REDACTED].

Generally, persons would not share a social media account unless living together. The presented social media statements were also somewhat supportive that Respondent lived with her spouse. It must be acknowledged that it is plausible that separated

married persons could share a [REDACTED] account and spend time together without living together. The evidence was mildly persuasive in establishing that Respondent and her spouse lived together throughout the alleged OI period.

MDHHS presented a FEE Investigation Report (Exhibit 1, pp. 71-72) from a non-testifying agent. The report stated that Respondent's spouse said on [REDACTED] that he lived with Respondent and had been doing so for the past 5 to 6 months. The report also stated that Respondent conceded that her spouse lived with her after she initially claimed that her spouse only sometimes lived with her.

Respondent's and her spouse's statements were not hearsay because they were statements against their interest. The non-hearsay statements appeared in a report which was hearsay. In administrative hearings, some discretion can be given in admitting inadmissible evidence if it is credible and/or reliable.

It is tempting to reject the FEE Investigation Report as inadmissible because the authoring agent failed to testify to the report's authenticity. It is notable that the authoring regulation agent documented Respondent's and her spouse's statements in a report, while sending the report as part of a hearing packet; thus, Respondent had notice of the alleged statements but did not appear for the hearing to rebut them. The report will be deemed to be admissible, however, the statements of Respondent and her spouse are given less weight because MDHHS did not provide testimony to support the investigative report's accuracy.

An email from the [REDACTED] Public Safety Department (Exhibit 1, pp. 58-59) dated [REDACTED], was presented. The email stated Respondent's spouse was arrested at Respondent's address in [REDACTED] (no year was specified). An attached court document (Exhibit 60) listing a disposition date from [REDACTED] listed Respondent's spouse's address to be the same as Respondent's address.

Each piece of MDHHS' evidence was imperfect. Despite the many imperfections, the evidence was not rebutted. Given the totality of evidence, it is more likely than not that Respondent's spouse lived with Respondent throughout the alleged OI period. MDHHS further alleged that Respondent's spouse's sharing of a residence caused an OI due to unreported employment income.

MDHHS presented Respondent's spouse's income information (Exhibit 1, pp. 74-79). Various gross pays from [REDACTED], were listed.

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, p. 81, 105). Monthly issuances of \$ [REDACTED] were listed from [REDACTED].

MDHHS presented an Issuance Summary (Exhibit 1, p. 80) and corresponding FAP overissuance budgets (Exhibit 1, pp. 82-95) from [REDACTED]. The budgets factored, in part, Respondent's FAP benefit issuances as stated on

presented documents. The budgets also factored Respondent's spouse's earnings as stated on presented documents. A total OI of \$[REDACTED] was calculated.

MDHHS policy categorizes overissuances into three different types: client error, agency error, and intentional fraud (see BAM 700). Client and Agency errors are not pursued if the estimated amount is less than \$[REDACTED] per program. BAM 700, p. 9.

The above policy allows MDHHS to pursue an OI no matter which party was at fault (assuming an OI of \$[REDACTED] or more is established). The OI budgets, as presented, can only be found accurate if it is found Respondent is at fault for the OI.

Presented budgets factored all of Respondent's spouse's income as unreported. Factoring employment income as unreported deprives clients from receipt of a 20% employment income credit (see BEM 556).

The presented Redetermination verified that Respondent did not report her spouse's household presence or his employment income. The document sufficiently established that Respondent purposely failed to report her spouse's income or household presence. It is found that Respondent failed to report her spouse's income, thereby justifying MDHHS factoring Respondent's spouse's employment to be unreported in the OI calculations. Thus, MDHHS properly deprived Respondent of the 20% employment income credit.

Presented evidence sufficiently verified Respondent's lack of reporting of her spouse and his income caused an OI of benefits during the alleged OI period. Presented evidence established that MDHHS correctly calculated the OI to be \$[REDACTED]. The analysis will proceed to determine if Respondent's non-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).

MDHHS alleged Respondent failed to report to MDHHS her Respondent's presence in the household as well as his employment income; this was established. By alleging an IPV, MDHHS essentially contended that Respondent's failure was purposeful and intentional.

The presented Redetermination dated [REDACTED], was a misreporting of circumstances. Respondent failed to list her spouse as a household member or his employment income.

Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015), p. 8. Respondent's written statements were indicative of a lack of truthfulness.

MDHHS established that Respondent was aware of reporting requirements. There was no indication Respondent failed to understand reporting requirements.

Generally, a written misreporting by a client is persuasive evidence that the client committed an IPV. Presented evidence does not suggest deviation from the general rule. It is found MDHHS clearly and convincingly established Respondent committed an IPV by failing to report employment income and group composition.

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 a previous history of IPV's by Respondent. Based on presented evidence, a 12-month disqualification 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 received an overissuance of

\$ [REDACTED] in FAP benefits from [REDACTED] due to an IPV. The MDHHS request to establish an overissuance and a 12-month disqualification against Respondent is **APPROVED**.

CG/jaf



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]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]