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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: September 25, 2017
MAHS Docket No.: 17-004990
Agency No.: [REDACTED]
Petitioner: MDHHS
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 September 18, 2017, from Detroit, Michigan. 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) and Family Independence Program (FIP) benefits.
2. From September 2013 through January 2015, Respondent's FAP and FIP eligibility factored Respondent's child (hereinafter "Child") born in [REDACTED]

3. From September 2013 through January 2015, excluding July 2014 through September 2014, Child did not live with Respondent.
4. From September 2013 through January 2015, Respondent received an OI of \$██████ in FAP benefits and \$██████ in FIP benefits due to improper inclusion of Child as a group member.
5. Respondent intentionally misreported to MDHHS that Child lived with him during the alleged OI period and/or intentionally failed to report that Child did not live with him during the alleged OI period.
6. On March 27, 2017, MDHHS requested a hearing to establish Respondent received an OI of \$██████ in FAP and \$██████ in FIP benefits from September 2013 through June 2014 and October 2014 through January 2015 due to an IPV.
7. Respondent has no previous history of 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 FAP benefits. MDHHS presented an Intentional Program Violation Repayment Agreement dated March 27, 2017 (Exhibit 1, pp. 6-7) alleging Respondent received \$██████ in over-issued FAP benefits from September 2013 through January 2015. MDHHS testimony clarified that the alleged OI period did not include July 2014 through September 2014. MDHHS alleged the OI was based on improper group composition related to Respondent's primary caretaker status.

Bridges will help determine 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 (July 2014), p. 1. Food Assistance Program 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. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. *Id.*

[For FAP benefits,] when a child spends time with multiple caretakers who do not live together such as joint physical custody, parent/grandparent, etc., [MDHHS is to] determine a primary caretaker. BEM 212 (October 2015), p. 3. Only one person can be the primary caretaker and the other caretaker(s) is considered the absent caretaker(s). *Id.* [MDHHS is to] determine primary caretaker by using a twelve-month period. *Id.*, p. 4. The twelve-month period begins when a primary caretaker determination is made. *Id.*

The child is always [bold lettering removed] in the FAP group of the primary caretaker [with one exception]. *Id.*, p. 3. If otherwise eligible, the absent caretaker may receive FAP benefits for the child when the child is visiting the absent caretaker for more than 30 days (not temporarily absent from the primary caretaker's home.) *Id.*, pp. 3-4.

MDHHS specifically alleged that Respondent received an OI based on improper inclusion of Child as a group member. MDHHS alleged that Child lived in Ohio, and not with Respondent during the alleged OI period. MDHHS presented documentary support for the allegations.

MDHHS presented an IG-180 PARIS Interstate Match (Exhibit 1, p. 13) for August 2014. MDHHS testimony indicated PARIS reports are sent by the federal government to alert MDHHS that a recipient of Michigan FAP benefits is also receiving benefits from another state. The report indicated that Child received medical benefits in Ohio. The report was consistent with an inquiry made to an Ohio agency concerning Child's receipt of benefits (see Exhibit 1, p. 14).

MDHHS presented a school record for Child from an Ohio school (Exhibit 1, p. 16). The record listed totals for Child's days of attendance and absence. In the 2013-14 schoolyear, 164 days of attendance and 4 days of absence were listed. For the 2014-15 schoolyear, 154 days of attendance and 12 days of absence were listed

MDHHS presented a parent release for information from an Ohio school (Exhibit 1, p. 17). A parent signature was dated September 11, 2014; the parent signer was Respondent. Respondent reported an Ohio address.

Various Ohio school documents concerning Child (Exhibit 1, pp. 18-21) were presented. The documents tended to verify Child's attendance in an Ohio school as of the following dates: September 16, 2014; October 13, 2014; May 18, 2015; and June 5, 2015.

Various case comments (Exhibit 1, p. 43) concerning Respondent's case were presented. Notes dated July 23, 2013, stated that Petitioner reported to MDHHS having Child in his household. Notes from January 2015 stated that Child was removed from Respondent's case due to Child's receipt of Ohio benefits. Notes from June 2015 indicated that Respondent reported that Child was back in Respondent's home. Notes from July 2015 stated that Child lives with Respondent during summers though Child returns to Ohio in August.

Presented school documents sufficiently verified that Child attends school in Ohio and does not live with Respondent during the school year. Thus, for purposes of FAP eligibility, Respondent was not the primary caretaker to child during the alleged OI period. Thus, Child should not have been factored as a FAP-group member during the alleged OI months.

MDHHS presented Respondent's FAP issuance history (Exhibit 1, pp. 44-46) from September 2013 through June 2014 and October 2014 through January 2015. Various FAP issuances were listed for each benefit month.

MDHHS presented a worksheet (Exhibit 1, p. 61) listing a calculated OI from September 2013 through June 2014 and October 2014 through January 2015. The worksheet listed original issuances as stated on presented issuance history. The worksheet listed Respondent's group size and income as factored in the original issuances. Respondent's proper FAP issuance was calculated by determining Respondent's eligibility after excluding Child as a household member by using charts from RFT 260 (see Exhibit 1, pp. 47-51). The OI was calculated by subtracting Respondent's proper issuances from the original issuances. A total OI of \$ [REDACTED] was calculated. Presented evidence sufficiently verified Respondent received \$ [REDACTED] in FAP benefits due to improper inclusion of Child as a group member.

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).

MDHHS requested a hearing, in part, to establish Respondent received an overissuance of FIP benefits. The presented repayment agreement also alleged that Respondent received \$ [REDACTED] in FIP benefits from September 2013 through January 2015. MDHHS testimony again clarified that the alleged OI period did not include July 2014 through October 2014 and that the OI was based on improper group composition related to Respondent's status as a primary caretaker to Child.

[For FIP benefits,] the primary caretaker is the caretaker who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half of the days in a month, when averaged over a twelve-month period. BEM 210 (July 2013) p. 3. The twelve-month period begins at the time the determination is being made. *Id.*

[For FIP benefits,] once a caretaker is determined to be the primary caretaker, the child's other caretakers are considered absent caretakers. *Id.* Only the primary caretaker can receive FIP for a child [with one exception]. *Id.*, p. 10. If otherwise eligible, an absent caretaker may receive FIP for a child when both of the following are true:

- The child lives with the absent caretaker for more than 30 consecutive days.

- The child does not meet temporary absent requirements to be considered living with the primary caretaker.

Id.

In the FAP analysis, it was found that Child's school records verified that Child did not live with Respondent during the alleged OI period. The same finding may be applied to the FIP analysis.

For purposes of FIP eligibility, Respondent was not the primary caretaker to child during the alleged OI period. Thus, Child should not have been factored as a FIP-group member during the alleged OI months.

Respondent's FIP issuance history (Exhibit 1, pp. 52-56) from September 2013 through January 2015 was presented. Various FIP issuances were listed.

MDHHS presented CASH- EDG Summary documents for September 2013 (Exhibit 1, p. 59) and June 2014 (Exhibit 1, p. 60). Each document listed group members factored for each month of Respondent's FIP eligibility. Child was listed as a group member for September 2013 and June 2014 (other months were not addressed).

MDHHS presented a worksheet (Exhibit 1, p. 62) listing the calculated OI from September 2013 through June 2014 and October 2014 through January 2015. The worksheet listed original issuances as stated on presented issuance history. The worksheet listed Respondent's group size and income as factored in the original issuance. MDHHS indicated that Respondent's proper issuance was calculated by determining Respondent's eligibility after excluding Child as a household member by using charts from RFT 210 (see Exhibit 1, p. 58). The OI was calculated by subtracting Respondent's proper issuances from the original issuances. A total OI of \$ [REDACTED] was calculated. Presented evidence sufficiently verified Respondent received \$ [REDACTED] in FIP benefits due to improper inclusion of Child as a group member.

It is found that MDHHS established OIs of FAP and FIP benefits. MDHHS alleged that the OIs were a result of 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 presented Respondent's application for State Emergency Relief benefits (Exhibit 1, pp. 22-42). Respondent's electronic signature was dated October 22, 2014. Reported household members included Child and two other children.

In the above analysis, it was already found that Child attended school in Ohio and lived with Respondent during summer months. Thus, Child was most probably not living with Respondent as of October 2014 despite Respondent's written reporting to the contrary.

Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015), p. 8. Respondent's misreporting was 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 proof that the client committed an IPV. Presented evidence does not suggest deviation from the general rule.

It is theoretically possible that Respondent verbally and accurately reported household members to MDHHS during the alleged OI period, either before after his written misreporting. The possibility is highly improbable given Respondent's written misreporting. Further, Respondent did not appear to assert such a claim. It is found MDHHS clearly and convincingly established Respondent committed an IPV by failing to accurately report household size.


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 one-year 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 committed an IPV related to \$ [REDACTED] in overissued FAP benefits and \$ [REDACTED] in overissued FIP benefits; both OIs occurring from September 2013 through June 2014 and October 2014 through January 2015. The MDHHS request to establish an overissuance and a one-year disqualification against Respondent is **APPROVED**.

CG/



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]