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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

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Date Mailed: May 30, 2018
MAHS Docket No.: 17-014939
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was scheduled for May 21, 2018, from Detroit, Michigan. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled time. The Michigan Department of Health and Human Services (MDHHS) was represented by Gary Shuk, regulation agent, with the Office of Inspector General. Respondent did not appear for the hearing.

ISSUE

The issue is whether MDHHS established that Respondent committed an intentional program violation (IPV) which justifies imposing an IPV disqualification against Respondent.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On March 17, 2016, Respondent applied for Food Assistance Program (FAP) benefits. Respondent's application listed household members which included an adult male friend (hereinafter "Friend". (Exhibit A, pp. 11-31)
2. From March 29, 2016, to April 17, 2017 (Exhibit A, pp. 34-38), Friend was employed in Texas. (Exhibit A, pp. 34-38)

3. From October 3, 2016, through March 31, 2017, Friend received FAP benefits from the State of Texas while using a Texas address. (Exhibit A, pp. 39-41)
4. On October 16, 2016, Petitioner applied for State Emergency Relief (SER). Petitioner's application reported that her household included Friend. (Exhibit A, pp. 42-67)
5. On April 7, 2017, Petitioner submitted a FAP application to MDHHS. Respondent's application reported that Friend was in her household. (Exhibit A pp. 68-87)
6. On June 27, 2017, Respondent applied for SER benefits. Respondent's application reported that Friend was a household member. (Exhibit A, pp. 88-90)
7. From May 2016 through August 2017, Respondent received FAP benefits based on a group which included Friend and a group income which did not include Friend's employment income.
8. On an unspecified date, MDHHS established an OI of \$ [REDACTED] against Respondent for the period of May 2016 through August 2017. (Exhibit A, pp. 91-124)
9. On October 11, 2017, MDHHS requested a hearing to establish a two-year disqualification against Respondent. MDHHS also requested a hearing to establish an OI of \$ [REDACTED] against Respondent.
10. As of the date of hearing, Client has one previously known IPV disqualification which occurred in Ohio from April 1996 through September 1996. (Exhibit A, pp. 125-126)
11. During the hearing, MDHHS withdrew their request to establish an OI against Respondent.

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 an overissuance of \$ [REDACTED] against Respondent for the time period of May 2016 through August 2017. During the hearing, MDHHS testimony acknowledged that the \$ [REDACTED] was previously established. MDHHS

verbally withdrew their request to establish an OI of \$ [REDACTED] against Respondent as the OI was already established. MDHHS's hearing request will be dismissed concerning the OI.

MDHHS also requested a hearing to establish an IPV disqualification related to the previously established OI against Respondent. MDHHS' Hearing Summary and testimony alleged that Respondent misreported group members which resulted in an OI of \$ [REDACTED]. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 5-6) dated November 27, 2017, sent to Respondent as part of MDHHS' prehearing procedures.

[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).

FAP group composition is established by determining all of the following: 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. BEM 212 (October 2015), 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. 3.

MDHHS presented multiple applications from Respondent during the period from May 2016 through August 2017. Each presented application verified that Respondent reported Friend as a member of her Michigan household. The evidence established that Respondent claimed Friend was a resident of her household in Michigan.

MDHHS presented Friend's employment information from TheWorkNumber.com. The WorkNumber.com documentation verified that Friend reported a Texas residence to his

employer during employment lasting from March 28, 2016, through April 17, 2017. MDHHS also presented documents sent from the State of Texas stating that Friend received FAP benefits from Texas from October 2016 through March 2017. The evidence established that Friend resided in Texas at least from the end of March 2016 through the middle of April 2017.

MDHHS also presented OI budgets calculating the difference between the FAP benefits Respondent received from her reporting of Friend as a household member and the benefits she should have received. Notably, none of Respondent's applications reported Friend's employment income. Thus, Respondent's increase in FAP benefits from reporting Friend as a household member would not be offset by his employment income. The budgets listed an OI of \$ [REDACTED]

Respondent did not appear for the hearing, but a MDHHS regulation agent testified that Respondent admitted that Friend worked in Texas; but he would periodically return to her household. MDHHS established that Friend worked full-time in Texas, reported a Texas address to his employer, and received FAP benefits in Texas. As Friend lived in Texas during the alleged OI period, Friend could not have been in Respondent's household, and therefore, should not have been a group member of Respondent's FAP group. Given the persuasive evidence that Friend resided in Texas during the alleged OI period, the only reasonable explanation for Respondent's reporting of Friend as a household member is that Respondent intended to misreport information for the purpose of obtaining FAP benefits she was not entitled to receive.

Based on the evidence, it is found that MDHHS established that Respondent committed an IPV. IPV alleged that a disqualification period of two years was justified.

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 presented documentation of Respondent's IPV history from Ohio. The documentation listed an IPV disqualification for Respondent from the 1990s. Consideration was given to whether a disqualification from outside of Michigan should be counted as a disqualification in Michigan. MDHHS policy appears to be silent on the matter, but federal regulations clearly state that, "The disqualification of an individual for an intentional program violation in one political jurisdiction shall be valid in another." 7 CFR 273.16(i)(5). Thus, Respondent's previous IPV from Ohio is countable, and it is found that MDHHS established a basis to disqualify Respondent for a period of two years.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS withdrew their request to establish an OI against Respondent. MDHHS' hearing request concerning establishment of an OI is **DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent committed an IPV justifying a disqualification period of two years. The MDHHS request to establish an IPV 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) 763-0155; 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

Lindsay Miller
MDHHS-Genesee-UnionSt-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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