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GOVERNOR

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

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DIRECTOR

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Date Mailed: May 10, 2018
MAHS Docket No.: 17-016896
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 held on April 30, 2018, from Detroit, Michigan. The hearing commenced at least 30 minutes after the scheduled hearing time. The Michigan Department of Health and Human Services (MDHHS) was represented by Meghan Kerr, regulation agent, with the Office of Inspector General. Respondent did not appear for the hearing.

ISSUES

The first issue is whether MDHHS established that Respondent received an overissuance (OI) of Food Assistance Program (FAP) benefits.

The second issue is whether MDHHS established by clear and convincing evidence 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. On October 29, 2015, Respondent submitted to MDHHS an application for FAP benefits and medical coverage. Respondent's application reported that five persons bought and prepared food together. Reported household members included Respondent's son whose birthdate was ██████████ 1998 (Child1). (Exhibit A, pp. 12-34.)

2. On November 9, 2015, Respondent's specialist documented that Respondent reported that Child1 was a full-time member of Respondent's household. (Exhibit A, pp. 108-109.)
3. On November 30, 2015, Respondent submitted to MDHHS an application for FAP benefits. Respondent's application reported that five persons bought and prepared food together and that Child1 was among the household members. (Exhibit A, pp. 35-55.)
4. On December 29, 2015, Respondent submitted to MDHHS an application for FAP benefits and other programs. Respondent's application reported that five persons bought and prepared food together and that Child1 was among the household members. (Exhibit A, pp. 56-83.)
5. On May 3, 2016, Respondent submitted to MDHHS an application for FAP benefits and medical coverage. Respondent's application reported that five persons bought and prepared food together and that Child1 was among the household members. (Exhibit A, pp. 84-107.)
6. On December 21, 2017, MDHHS received a fraud referral that Child1 was not in Respondent's household during times when Respondent reported Child1 as a household member. (Exhibit A, pp. 110-111.)
7. On an unspecified date, MDHHS completed FAP OI budgets from October 2015 through September 2016, Respondent received a total of \$ [REDACTED] in FAP benefits. (Exhibit A, pp. 131-132.) Without Child1 as a group member, Respondent would have received \$ [REDACTED] in fewer FAP benefits from the period of October 2015 through September 2016. (Exhibit A, pp. 133-157.)
8. From October 2015 through September 2016, Child1 did not live with Respondent.
9. On December 21, 2017, MDHHS requested a hearing to establish Respondent received an OI of \$ [REDACTED] in over-issued FAP benefits for the period from October 2015 through September 2016. MDHHS also requested a hearing to establish a one-year disqualification against Respondent.
10. Respondent was clearly and correctly instructed of reporting requirements.
11. During all relevant times, Respondent had no apparent impairment to understanding reporting requirements.
12. As of the hearing date, Respondent had no previous 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).

It is notable that MDHHS testimony acknowledged that a hearing packet sent to Respondent before the hearing was returned as undeliverable. The hearing proceeded because MDHHS testimony also indicated that the address used to mail the packet was the same address used in Respondent's ongoing benefit case. Support for holding the hearing was further supported by the lack of evidence that Respondent did not receive a subsequently mailed Notice of Hearing.

MDHHS' Hearing Summary and testimony alleged that Respondent received an OI of \$ [REDACTED] in FAP benefits based on improperly calculated group members. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 6-7) dated [REDACTED], 2017, sent to Respondent as part of MDHHS' prehearing procedures.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (October 2016), p. 1. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. *Id.*

Bridges will help determine who must be included in the FAP group prior to evaluating the nonfinancial and financial eligibility of everyone in the group. Food Assistance Program 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 (July 2014), p. 1.

[For FAP benefits,] when a child spends time with multiple caretakers who do not live together such as joint physical custody, parent/grandparent... 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 12-month period. *Id.*, p. 4. The 12-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 presented multiple documents which established that Respondent received FAP benefits from the alleged OI period based on a group which included Child1. MDHHS also presented documents supporting that Child1 did not live with Respondent during the alleged OI period.

MDHHS presented a school record for Child1. Child1's listed residential address did not match any of Respondent's addresses from submitted applications. MDHHS testimony indicated that Child1's residential address did match Child1's father's address. (Exhibit A, pp. 112-114.)

The school record for Child1 also listed Child1's mailing address. Child1's mailing address matched Respondent's reported address from each of her applications submitted to MDHHS in 2015. Consideration was given to whether use of Respondent's address as a mailing address on a school document was evidence that Child1 resided with Respondent. This consideration was rejected because the more persuasive indicator of Child1's home address was his listed residential address and not a mailing address. Presented court documents further supported rejecting that Child1 lived with Respondent during the OI period.

MDHHS presented a Judgment of Divorce from a hearing dated [REDACTED] 2011. The judgment stated that Child1's father would receive physical custody of Child1 and that legal custody would be joint. It was also stated that Child1's father would receive approximately 275 overnights per year with Child1 and that Respondent would receive 90. (Exhibit A, pp. 115-120.)

MDHHS presented a Uniform Child Support Order signed by a judge on [REDACTED] 2014, concerning Child1's custody. The court ordered that Respondent did not have to pay child support despite a \$[REDACTED] per month obligation. The basis for not ordering Respondent to pay child support was stipulation by Child1's father. (Exhibit A, pp. 124-126.)

MDHHS presented an order of parenting time concerning Child1 signed by a judge on [REDACTED], 2016. The judge ordered Child1 to live exclusively with Child1's father. (Exhibit A, pp. 127-128.)

Presented court documents established ongoing custody of Child1 by Child1's father who lived separately from Respondent. The evidence was supportive in finding that Child1 lived with his father and not Respondent during the alleged OI period. It is found that MDHHS established that Child1 did not live with Respondent during the alleged OI period.

MDHHS presented OI budgets calculating the OI Respondent received as a result of inclusion of Child1 as a FAP group member. The budgets calculated an OI of \$[REDACTED] for the period of October 2015 through September 2016. The budgets appeared correct and consistent with policy.

Based on the evidence, it is found that MDHHS established that Respondent received an OI of \$ [REDACTED] for the period of October 2015 through September 2016. MDHHS further alleged that the OI was caused by an IPV by Respondent justifying a disqualification penalty.

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 that the OI found above was caused by Respondent's purposeful misreporting of information. MDHHS presented multiple applications from Respondent which reported that Child1 was a household member during the now established OI period. Boilerplate language on MDHHS applications state that the client's signature is certification, subject to perjury, that all reported information on the document was true. The language is consistent with MDHHS policy which states that clients must completely and truthfully answer all questions on forms and in interviews (see BAM 105 (October 2016), p. 8). The evidence was not indicative that Respondent did not or could not understand the clear and correct reporting requirements.

The evidence established that Respondent misreported information by claiming Child1 as a household member during a time when Child1 lived elsewhere. Generally, a

client's written statement which contradicts known facts resulting in an OI is clear and convincing evidence of an IPV. Evidence was not presented to rebut the generality.

It is found MDHHS clearly and convincingly established that Respondent committed an IPV. Accordingly, MDHHS may proceed with disqualifying Respondent from benefit eligibility.


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 Respondent previously committed an IPV. Thus, a one-year disqualification period 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 based on receipt of \$ [REDACTED] in over-issued FAP benefits for the period from October 2015 through September 2016. The MDHHS request to establish an overissuance of \$ [REDACTED] and a disqualification period of one year 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

Petitioner

MDHHS-OIG-Hearings

DHHS

[REDACTED]
MDHHS-Kalkaska-Hearings

Respondent

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

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Policy Recoupment
C Gardocki
MAHS