



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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

Date Mailed: June 6, 2018  
MAHS Docket No.: 17-016411  
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, 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 23, 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 Joseph Lalli, 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 committed an intentional program violation (IPV) which justifies imposing an IPV disqualification against Respondent.

The second issue is whether MDHHS established that Respondent received an overissuance (OI) of benefits.

**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 Food Assistance Program (FAP) recipient.

2. Respondent's household initially included a household with two minor children, Daniel and Chace (hereinafter "Child1" and "Child2").
3. On October 1, 2015, a probate county judge appointed full guardians for Child1 and Child2. Each of the guardians lived outside of Respondent's household. (Exhibit A, pp. 11-12)
4. From October 2015 through December 2015, Respondent received \$█/month in FAP benefits based on a 5-person FAP group. From January 2016 through May 2016, Respondent received \$█ in FAP benefits based on a 5-person FAP group. From June 2016 through November 2016, Respondent received \$█/month in FAP benefits based on a 6-person FAP group. (Exhibit A, p. 15)
5. For all months from October 2015 through November 2016, Respondent received FAP benefits based on a FAP group which included Child1 and Child2.
6. On December 4, 2015, Respondent submitted to MDHHS a State Emergency Relief (SER) application which reported Child1 and Child2 as household members. (Exhibit A, pp. 16-19)
7. On April 15, 2016, Respondent submitted an application for MA benefits which did not list Child1 and Child2 as household members. (Exhibit A, pp. 20-29)
8. On November 14, 2017, MDHHS requested a hearing to establish an IPV disqualification of one year against Respondent based on Respondent's failure to report and/or misreporting of household members. MDHHS also requested a hearing to establish an OI of \$█ against Respondent for the period from October 2015 through November 2016. (Exhibit A, p. 1)
9. MDHHS' OI calculation was based on the following amounts calculated to be the monthly issuances that Respondent was entitled to receive: \$█ from October 2015 through December 2015, \$█ from January 2016 through May 2016, and \$█ from June 2016 through November 2016. (Exhibit A, p. 30)
10. As of the date of hearing, Respondent had no known previous IPV disqualifications.

### **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' Hearing Summary and testimony alleged that Respondent received an OI of \$ [REDACTED] in FAP benefits from October 2015 through November 2016. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 5-6) dated November 14, 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.*

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 court documents which established that a guardian was appointed for Child1 and Child2 as of October 2015. The address of the court-appointed guardian for Respondent's children listed on the court documents was for an address that was not Respondent's address from any presented applications. The evidence sufficiently verified that Child1 and Child2 were not in Respondent's home as of October 2015.

MDHHS testimony credibly alleged that Respondent received FAP benefits from October 2015 through November 2016 based on a group which included Child1 and Child2. Based on the evidence establishing that neither Child1 nor Child2 were in Respondent's home during the alleged OI period, Respondent's FAP benefits from October 2015 through November 2016 were issued based on an improper group size.

MDHHS presented an OI worksheet which demonstrated how an OI of \$ [REDACTED] was calculated. The worksheet included the following information concerning October 2015 through December 2015:

Benefit month	Group size	Issued FAP	Corrected FAP	OI
October 2015	5	[REDACTED]	[REDACTED]	[REDACTED]
November 2015	5	[REDACTED]	[REDACTED]	[REDACTED]
December 2015	5	[REDACTED]	[REDACTED]	[REDACTED]

The problem with MDHHS' calculation from October 2015 through December 2015 is that the correct FAP issuance for a group size of 3 persons with an original issuance of

\$█ is \$█ RFT 260 (October 2015) p. 6. It is possible that MDHHS correctly calculated Respondent's OI but mistakenly listed Respondent's group size as 5 persons (starting with a 4-person FAP group and taking away two members would result in a correct FAP issuance of \$█ however, such a possibility is purely speculative. Given the evidence, Respondent's proper OI will be based on a finding that Respondent was entitled to receive \$█ in FAP benefits from October 2015 through December 2015. MDHHS will be denied an OI of \$█ for the apparent miscalculation for the benefit months from October 2015 through December 2015. MDHHS established a basis for the remaining OI of \$█

MDHHS also requested a hearing to establish an IPV disqualification Respondent. MDHHS' Hearing Summary and testimony alleged that the OI was caused by Respondent's misreporting and/or failure to report a change in group members.

[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.

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 a SER application from Respondent which Respondent signed on December 4, 2015. Respondent's application listed Child1 and Child2 as household members. Respondent's reporting contradicts court documents which established that Child1 and Child2 were not in Respondent's household as of October 1, 2015.

Boilerplate language on MDHHS applications states 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 in writing to MDHHS by claiming two children as household members who were not members of Respondent's household. Respondent's misreporting directly led to an OI of benefits. 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.

Consideration was given to whether Respondent's misreporting was willful because she accurately reported in a MA application (submitted to MDHHS in April 2016) that Child1 and Child2 were not household members. By the time that Respondent accurately reported her household members, a written misreporting and an OI already occurred. Respondent's eventual accurate reporting does not change that Respondent's previous written misreporting caused Respondent to receive benefits she was not entitled to receive.

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 received an OI of \$ [REDACTED] in FAP benefits for the period from October 2015 through November 2016. MDHHS failed to establish a basis for a \$ [REDACTED] OI. The MDHHS request to establish an overissuance against Respondent is **PARTIALLY APPROVED**.

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 one-year disqualification period. The MDHHS request to establish an IPV 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) 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**

Clarence Collins  
MDHHS-Wayne-55-Hearings

**Petitioner**

MDHHS-OIG-Hearings

**Respondent**

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