



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

██████████
██████████
██████████ MI ██████████

Date Mailed: June 11, 2018
MAHS Docket No.: 17-016669
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION FOR
INTENTIONAL PROGRAM VIOLATION**

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 24, 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 Allyson Carneal, regulation agent, with the Office of Inspector General. Respondent did not appear for the hearing.

ISSUE

The issue is whether MDHHS established by clear and convincing evidence 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 August 31, 2015, Respondent submitted to MDHHS an application for FAP benefits. Boilerplate language stated that Respondent's signature was certification, subject to penalties of perjury, that all reported statements were accurate. Respondent reported that her household included daughters named ██████████ (Child1) and ██████████ (Child2). Respondent reported a residence in ██████████ Michigan. (Exhibit A, pp. 11-38)

2. On June 22, 2016, Respondent signed a Redetermination which was later submitted to MDHHS. The Redetermination reported Child1 and Child2 as household members. Respondent reported no change to her [REDACTED] Michigan, address. (Exhibit A, pp. 43-48)
3. From August 7, 2015, through November 13, 2015, Child1 received ongoing employment income from an employer. Child1 reported an address in [REDACTED] Michigan, to her employer. (Exhibit A, pp. 84-85)
4. From January 10, 2017, through June 13, 2017, Child1 received ongoing employment income from an employer. Child1 reported an address in [REDACTED] Michigan, to her employer. (Exhibit A, pp. 81-83)
5. On June 9, 2017, Respondent submitted to MDHHS an application for health care coverage. Respondent's application reported that her household included Child1 and Child2. Respondent reported no change to her [REDACTED] Michigan, address. (Exhibit A, pp. 88-120)
6. On June 13, 2017, Respondent signed a Redetermination which was later submitted to MDHHS. The document reported Child1 and Child2 as household members. Respondent reported no change to her [REDACTED] Michigan, address. (Exhibit A, pp. 72-79)
7. On November 21, 2017, a regulation agent interviewed Child1 concerning her residence. During the interview, Child1 signed a statement that she last lived with Respondent in December 2015. (Exhibit A, p. 86)
8. On November 21, 2017, a regulation agent interviewed Child2 concerning her residence. During the interview, Child2 signed a statement that she has not lived with Respondent since at least 2015. (Exhibit A, p. 87)
9. From at least January 2016 through July 2017, Respondent received ongoing FAP benefits. (Exhibit A, pp. 121-124) Respondent's FAP eligibility was based on a FAP group which included Child1 and/or Child2 as group members. (Exhibit A, pp. 39-42, 58-61, 64-71)
10. On an unspecified date, MDHHS established that Respondent received an overissuance of \$ [REDACTED] in FAP benefits due to improper group size. (Exhibit A, pp. 125-166)
11. On November 30, 2017, MDHHS requested a hearing to establish an IPV disqualification of two years against Respondent. (Exhibit A, p. 1)
12. As of the date of hearing, Respondent had one previous IPV disqualification. (Exhibit A, p. 167)

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 to establish a two-year IPV disqualification against Respondent. MDHHS' Hearing Summary and testimony alleged that Respondent committed an IPV by failing to report and/or misreporting FAP-benefit 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; 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).

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2016), p. 11. Persons in household are among the listed changes which must be reported. *Id.*, p. 12

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 OI budgets from January 2016 through July 2017 which calculated that Respondent received an OI of FAP benefits totaling \$ [REDACTED] MDHHS also presented Notices of Case Action which verified that Child1 and/or Child2 were group members during the OI period.

MDHHS presented signed statements from Child1 and Child2. Each child stated that she did not live with Respondent since 2015. The statement of Child1 was consistent with her employment records which indicated that Child1 reported an address separate from Respondent during periods of employment from August 7, 2015, through November 13, 2015, and January 10, 2017, through June 13, 2017. The evidence sufficiently established that Child1 and Child2 were not members of Respondent's household during the OI period.

The evidence established that Respondent received an OI of FAP benefits due to improper inclusion of Child1 and Child2 as group members. MDHHS further alleged that the OI was caused by Respondent's intentional misreporting.

MDHHS presented reporting documents from Respondent which were dated June 22, 2016; June 9, 2017; and June 13, 2017. On each document, Respondent reported that Child1 and Child2 were household members. Respondent's reporting directly conflicted with the statements of Child1 and Child2 who reported not living with Respondent since 2015 as well as Child1's employment records. The evidence supported finding that Respondent misreported having Child1 and Child2 in her household.

Boilerplate language on MDHHS reporting documents 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 group members to MDHHS. Respondent's misreporting directly led to an OI of benefits. Generally, a client's written statement which contradicts established facts resulting in an OI is clear and convincing evidence of an IPV. Respondent did not present any evidence to rebut the generality.

Based on the evidence, MDHHS established that Respondent intentionally misreported group members which caused an OI. Thus, MDHHS established that Respondent committed an IPV.

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 a summary of Respondent's previous IPV sanctions (Exhibit A, p. 167). The summary listed an IPV sanction from 2007 against Respondent. The evidence sufficiently established that Respondent had one previous IPV disqualification. Respondent's second IPV disqualification justifies imposing a two-year period of disqualification.

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 justifying a two-year disqualification period. 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

Petitioner

MDHHS-OIG-Hearings

DHHS

Raina Nichols
MDHHS-Washtenaw-Hearings

Respondent

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

M Shumaker
Policy Recoupment
C Gardocki
MAHS