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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: July 24, 2018
MAHS Docket No.: 18-000664
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 July 23, 2018, from Detroit, Michigan. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled hearing 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.

ISSUES

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

The second issue is whether MDHHS established by clear and convincing evidence that Respondent committed an intentional program violation (IPV) which justifies imposing a 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 ██████████, 2007, Respondent was convicted of a crime. (Exhibit A, pp. 11-12)

2. On November 9, 2007, Respondent was placed on probation for a two-year period. (Exhibit A, pp. 13-15)
3. On November 9, 2009, Respondent's probation was extended through November 9, 2010, or until all costs and fines were paid. (Exhibit A, p. 15)
4. On ██████████ 2010, a bench warrant was issued for Respondent due to Respondent's failure to report for probation beginning December 2009. (Exhibit A, p. 16)
5. On July 6, 2016, Respondent submitted to MDHHS a Redetermination for Food Assistance Program (FAP) benefits. Respondent answered "No" in response to a question asking if anyone was on probation or parole. (Exhibit A, pp. 20-34)
6. On April 24, 2017, Respondent submitted to MDHHS an application for Food Assistance Program (FAP) benefits. Respondent answered "No" in response to a question asking if anyone was on probation or parole. Respondent also reported that there were no outstanding warrants against her. (Exhibit A, pp. 35-46)
7. As of ██████████, 2017, the most recent court action taken was issuance of the bench warrant from ██████████, 2010. (Exhibit A, pp. 17-19)
8. From July 2016 through July 2017, Respondent received \$██████ in FAP benefits based on a group size of one person. (Exhibit A, p. 48)
9. On January 22, 2018, MDHHS requested a hearing to establish that Respondent received an OI of \$██████ in FAP benefits from July 2016 through July 2017 and to establish an IPV disqualification of one year against Respondent. (Exhibit A, p. 1)
10. As of the date of hearing, Respondent had no known previous IPV disqualifications.
11. During all relevant times, Respondent had no apparent impairment to understanding or fulfilling reporting requirements (see Exhibit A, p. 47).

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. The basis of the OI was that Respondent was a probation violator during the alleged OI period. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 6-7) 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. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. Recoupment is an MDHHS action to identify and recover a benefit overissuance. BAM 700 (January 2016), pp. 1-2.

For FAP benefits, a person who is violating a condition of probation or parole imposed under a federal or state law is disqualified. The person is disqualified as long as the violation occurs. BEM 203 (October 2015), p. 3.

MDHHS presented documents verifying that Respondent was convicted of a crime, placed on probation, and a violator of probation. A court record dated October 13, 2017, which listed a bench warrant from 2010 as the most recent court action, sufficiently verified that Respondent was a probation absconder as of 2010 and remained so through October 13, 2017.

Respondent's benefits issuance history verified that Respondent received \$[REDACTED] in FAP benefits from July 2016 through July 2017. As a probation absconder during the OI period, Respondent was disqualified from receipt of FAP benefits. Respondent received benefits as a group size of one. As a group size of one, Respondent's disqualification would result in disqualification of the entire FAP group. Thus, MDHHS establish an OI of \$[REDACTED] against Respondent. MDHHS alleged the OI was caused by Respondent's IPV.

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 an application and Redetermination submitted to MDHHS from Respondent. Respondent reported she was not on probation in each document. 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 information in writing to MDHHS by claiming she was not on probation. The evidence established that Respondent was not only on probation, but also a probation absconder. 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 the intent required to establish 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.

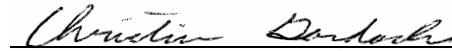
The standard disqualification period is used in all instances except when a court orders a different period. BAM 725 (January 2016), p. 16. [MDHHS is to] apply the following disqualification periods to recipients determined to have committed an IPV ... one year for the first IPV ... two years for the 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 from July 2016 through July 2017. The MDHHS requests to establish an overissuance and a disqualification period of one year against Respondent are **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

Carisa Drake
MDHHS-Calhoun-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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

M Shumaker
Policy Recoupment
C Gardocki
MAHS