



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: July 17, 2018
MAHS Docket No.: 18-003268
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 held on July 12, 2018, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by Julie Brda, regulation agent with the Office of Inspector General. Respondent appeared and was unrepresented.

ISSUES

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

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

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 February 9, 2015, Respondent submitted a Redetermination to MDHHS. Respondent reported a household of one. The only reported income was \$ [REDACTED] (from a renter). (Exhibit A, pp. 11-16)

2. On September 11, 2015, Respondent submitted a Redetermination to MDHHS. Respondent reported a household of one. The only reported income was \$ [REDACTED] (from a renter). (Exhibit A, pp. 17-22)
3. On September 9, 2016, Respondent submitted a Redetermination to MDHHS. Respondent reported a household of one. Respondent checked "No" to a question asking if she had income. Respondent also wrote that she receives an unspecified amount of retirement benefits and unspecified "help" from a friend. (Exhibit A, pp. 23-28)
4. On December 1, 2016, Respondent submitted a Redetermination to MDHHS. Respondent reported a household of one. Respondent listed no income in response to a section asking about her income, but also wrote she receives \$ [REDACTED]/month in retirement benefits. (Exhibit A, pp. 23-28)
5. On an unspecified date, MDHHS received Respondent's bank account statements from January 2015 through December 2016. (Exhibit A, pp. 38-97), the following deposit totals were listed:

	<u>2015</u>	<u>2016</u>
January	\$ [REDACTED]	\$ [REDACTED]
February	\$ [REDACTED]	\$ [REDACTED]
March	\$ [REDACTED]	\$ [REDACTED]
April	\$ [REDACTED]	\$ [REDACTED]
May	\$ [REDACTED]	\$ [REDACTED]
June	\$ [REDACTED]	\$ [REDACTED]
July	\$ [REDACTED]	\$ [REDACTED]
August	\$ [REDACTED]	\$ [REDACTED]
September	\$ [REDACTED]	\$ [REDACTED]
October	\$ [REDACTED]	\$ [REDACTED]
November	\$ [REDACTED]	\$ [REDACTED]
December	\$ [REDACTED]	\$ [REDACTED]

6. On an unspecified date, MDHHS asked Respondent about her bank account deposits exceeding her reported monthly income. Petitioner reported to MDHHS that her adult son (hereinafter "Son") is employed and that he regularly deposits money into Respondent's account for the purpose of helping Respondent pay bills.
7. From January 2015 through December 2016, Respondent received FAP benefits, in part, based on unbudgeted income from Son. In total, Respondent received \$ [REDACTED] in FAP benefits. (Exhibit A, pp. 148-152)
8. On January 29, 2018, MDHHS calculated that Respondent received \$ [REDACTED] in over-issued FAP benefits from January 2015 through December 2016 due to unbudgeted income from Son. (Exhibit A, pp. 98-147)

9. On March 29, 2018, MDHHS requested a hearing to establish that Respondent received a FAP benefit OI of \$ [REDACTED] from January 2015 through December 2016. MDHHS also requested a hearing to establish that Respondent committed an IPV justifying imposing a one-year disqualification period.
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 a FAP benefit OI of \$ [REDACTED] from January 2015 through December 2016. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 5-6) 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 a MDHHS action to identify and recover a benefit overissuance. BAM 700 (January 2016), pp. 1-2.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes in income must be reported within 10 days of receiving the first payment reflecting the change. BAM 105 (January 2015), p. 7.

MDHHS presented FAP-OI budgets demonstrating how an OI was calculated. The alleged OI was calculated by factoring Respondent's original FAP issuances and subtracting Respondent's "correct" issuance. Respondent's "correct" issuances factored deposits made into Respondent's bank account as unearned income. For the budgets to be correct, the bank deposits budgeted as Respondent's unearned income would have to be properly categorized as unearned income.

Income means a benefit or payment received by an individual which is measured in money. BEM 500 (July 2014) p. 3. A donation to an individual by family or friends is the individual's unearned income. Bridges counts the gross amount actually received, if the individual making the donation and the recipient are not members of any common eligibility determination group. BEM 503 (July 2014), p. 10.

Respondent testified that the bank deposits from January 2015 through December 2016 were made by Son. Respondent testified that Son was employed, and he would cash his check and make cash deposits into Respondent's account so she could pay her expenses. Respondent's testimony was consistent with what she reported to MDHHS. Taking Respondent at her word, Son's deposits over a full 2-year period would be properly considered unearned income for Respondent.

Presented evidence established that unbudgeted income from Son resulted in Respondent receiving an OI of \$[REDACTED] from January 2015 through December 2016. Thus, MDHHS established an OI against Respondent. MDHHS alleged that 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).

It has already been established that Respondent received an overissuance of \$[REDACTED] due to unbudgeted unearned income. For an IPV to be established, MDHHS must establish that Respondent intentionally failed to report income from Son.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2016), p. 11. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015), p. 8.

MDHHS presented four different reporting documents from Respondent. All four documents were submitted to MDHHS during a time when Respondent received ongoing income from Son. None of Respondent's documents reported unearned income from Son. Respondent's reporting was made subject to penalty of perjury.

Consideration was given to whether Respondent intentionally failed to report income to MDHHS. Generally, one does not think of money from family members as an income. In the present case, Respondent received regular weekly deposits into her bank account. Son's monthly deposit totals were never less than \$300 and sometimes exceeded \$1,000. Though an occasional donation from a family member may not be thought of as unearned income, the frequency, regularity, amount, and duration of Son's deposits to Respondent render it clear and convincing that Respondent was aware that Son was giving her an income.

It is notable that Respondent was aware enough of the need to report to report that she received help from a friend, yet she did not report any help from Son. During the hearing, Respondent was asked why she did not report Son's deposits as income on reporting documents. Respondent could not provide an explanation.

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. 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. BAM 725 (January 2016), p. 16.

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 a FAP benefit OI of \$██████ from January 2015 through December 2016 due to an IPV. The MDHHS requests to establish overissuances 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

Jeanenne Broadnax
MDHHS-Wayne-18-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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

M Shumaker
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C Gardocki
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