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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 30, 2018
MAHS Docket No.: 18-003596
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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 July 18, 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.

ISSUE

The 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 October 27, 2014, Respondent submitted to MDHHS a Redetermination concerning ongoing FAP eligibility. Respondent reported no change to household members, which included two grandchildren (hereinafter "Grandchildren") with dates of birth of [REDACTED], and [REDACTED]. (Exhibit A, pp. 9-14)

2. On October 13, 2015, Respondent submitted to MDHHS a Redetermination concerning ongoing FAP eligibility. Respondent reported that Grandchildren stayed in her home “4/5” days in response to a question asking how many days per month they sleep at Respondent’s home. (Exhibit A, pp. 15-22)
3. On August 12, 2016, the specialist of Grandchildren’s mother documented an interview with Grandchildren’s mother (hereinafter “Mom”) after discovering that Grandchildren received benefits on Respondent’s case. Mom reported that Grandchildren always lived with her and never lived with Respondent. (Exhibit A, p. 23)
4. On August 22, 2016, MDHHS received Grandchildren’s school records from 2016-17. Each Grandchild was listed as living with Mom. Mom was listed as Grandchildren’s first contact. Respondent was listed as Grandchildren’s fourth contact (after Mom, a stepfather, and an aunt). (Exhibit A, pp. 24-27).
5. On August 22, 2016, MDHHS received Grandchildren’s school records from Grandchildren’s school district in 2014 and 2015. (Exhibit A, pp. 28-32)
6. Per the testifying regulation agent, Grandchildren’s address from presented school records matched Mom’s address.
7. From December 2014 through August 2016, Respondent received ongoing FAP benefits for a group of three persons. (Exhibit A, p. 34)
8. On January 13, 2017, MDHHS calculated that Respondent received an overissuance of \$ [REDACTED] in FAP benefits from December 2014 through August 2016 due to improper inclusion of Grandchildren as group members. (Exhibit A, pp. 35-78)
9. On January 23, 2017, Respondent reported to OIG that Grandchildren had not lived with her since September 2015. Respondent also signed an agreement to repay an unspecified amount of FAP benefits. (Exhibit A, p. 3)
10. On April 5, 2018, MDHHS requested a hearing to establish that Respondent committed an IPV justifying imposing a one-year disqualification.
11. As of the hearing date, 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 committed an IPV related to an OI of \$ [REDACTED] in FAP benefits. The basis of the IPV was Respondent's misreporting of Grandchildren as household members. 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.

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).

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. For FAP benefits, when a child spends time with multiple caretakers who do not live together, such as joint physical custody, 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. *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 in the FAP group of the primary caretaker (with one inapplicable exception). *Id.*, p. 3.

For an IPV to be established, it would have to be established that Grandchildren were not household members of Respondent during the OI period. Presented school records were consistent that Grandchildren lived with Mom, and not Respondent during the OI period. MDHHS also documented an interview with Mom who reported that Grandchildren hadn't lived with Respondent for "many, many years" (see Exhibit A, p. 3). Mom also reported information about Grandchildren's previous bus stop which was consistent with information obtained from Grandchildren's bus driver (see *Id.*). Further, Respondent essentially acknowledged that Grandchildren did not live with her by voluntarily signing an agreement to repay FAP benefits received on behalf of Grandchildren.

The evidence sufficiently established that Grandchildren did not live with Respondent during the OI period. MDHHS must also establish that Respondent purposely misreported/failed to report information for an IPV to be established.

MDHHS alleged that Respondent's intent can be inferred from misreported information on multiple Redeterminations. Respondent's Redetermination dated October 27, 2014, verified that Grandchildren were on Respondent's ongoing case, though Respondent did not report any misinformation concerning Grandchildren. Thus, no inference can be made concerning Respondent's intent from this Redetermination.

Respondent's Redetermination dated October 13, 2015, reported that Grandchildren stayed with her "4/5" days; Respondent gave this response to a question asking how many days per months that Grandchildren slept at her residence. MDHHS interpreted Respondent's answer literally- as a report that Grandchildren stayed with her 4 out of every 5 every day. Adopting such an interpretation would support finding an IPV as the evidence establish that Grandchildren never stayed with Respondent 80% (i.e. 4 out of 5 days) of the time.

Respondent's response could also be reasonably interpreted as an intent to report that Grandchildren stay at her home 4-5 nights per month. Though such an interpretation is not consistent with Respondent's choice of punctuation, it is a more direct response to the question being asked. If Respondent intended to report that Grandchildren slept at her home 4-5 days per month, presented evidence did not contradict her statement. Adopting this interpretation would support rejecting Respondent's statement as evidence of a misreporting because the evidence did not establish that Grandchildren stayed with Respondent less than 4-5 days per month. Given the reasonableness of either interpretation, it cannot be determined if Respondent's statement was a misreporting of information or not.

Presumably, if Respondent intended to report that Grandchildren lived with her full-time, this would be indicated on Respondent's application for benefits. Notably, MDHHS did not present the application or other reporting documents from before Grandchildren were added to Respondent's FAP case. Such documents would show what Respondent

reported concerning Grandchildren and would have been insightful in determining Respondent's intent in reporting.

MDHHS contended that Respondent's voluntary agreement to repay benefits was evidence of her purposeful intent to misreport. Respondent's agreement can be inferred as an admission by Respondent that she received an overissuance of FAP benefits. Respondent's agreement is not insightful in establishing Respondent's intent concerning receipt of over-issued FAP benefits. Given the evidence, it is found that MDHHS failed to establish 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.*

Without a finding that a client committed an IPV, an IPV disqualification cannot follow. Thus, MDHHS will be denied the request to establish a one-year disqualification against Respondent.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish that Respondent committed an IPV justifying a one-year period of disqualification. The MDHHS request to establish an IPV disqualification against Respondent is **DENIED**.

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

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