



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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Date Mailed: July 3, 2018  
MAHS Docket No.: 18-004713  
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 June 27, 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 Ryan Sevenski, 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 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 September 27, 2012, a circuit court ordered that Child1 and Child2's father had physical custody of ██████████ (hereinafter "Child1") and ██████████ (hereinafter "Child2"). Respondent was allowed supervised custody for approximately 7 hours per week of Child1 and Child2, as well as holidays. (Exhibit A, pp. 70-75)

2. On March 5, 2013, Respondent submitted to MDHHS an application for FAP benefits. Respondent's application reported Child1 and Child2 as members of her household for 30 days per month. (Exhibit A, pp. 11-30)
3. On August 1, 2013, Respondent submitted to MDHHS a Semi-Annual Contact Report which reported that Child1 and Child2 were ongoing household members. (Exhibit A, pp. 31-32)
4. On April 27, 2014, Respondent submitted to MDHHS a Semi-Annual Contact Report which reported that Child1 and Child2 were ongoing household members. (Exhibit A, pp. 33-34)
5. On May 7, 2014, Respondent submitted to MDHHS an application for FAP benefits. Respondent's application reported Child1 and Child2 as members of her household for 30 days per month. (Exhibit A, pp. 35-58)
6. On April 29, 2015, Respondent submitted to MDHHS a Redetermination which reported that Child1 and Child2 were ongoing household members who lived with her 30 days per month. (Exhibit A, pp. 59-64)
7. From March 2013 through July 2015, Respondent received \$ [REDACTED] in FAP benefits. (Exhibit A, pp. 134-138.) Respondent's FAP eligibility were based, in part, on Child1 and Child2 as group members.
8. On January 11, 2018, MDHHS calculated that Respondent received an OI of \$ [REDACTED] from March 2013 through July 2015 due to improper group size. Respondent's proper FAP issuance was based on the exclusion of Child1 and Child2 as FAP group members. (Exhibit A, pp. 77-133)
9. On May 9, 2018, MDHHS requested a hearing to establish that Respondent received an OI of \$ [REDACTED] in FAP benefits from March 2013 through July 2015. MDHHS also requested a hearing to establish that Respondent committed an IPV justifying imposing a 2-year disqualification period. (Exhibit A, p. 1)
10. As of the date of hearing, Respondent has one previous IPV. (Exhibit A, p. 139)

### **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 March 2013 through July 2015 because Child1 and Child2 were improperly factored as FAP group 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.

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.

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 not applicable exception). *Id.*, p. 3.

MDHHS presented a custody order from a Michigan circuit court dated [REDACTED] 2012. The order granted primary physical custody of Child1 and Child2 to their biological father. Respondent was given visitation for only approximately seven hours per week. The court order was consistent with finding that Respondent was not the primary caretaker to Child1 and Child2 during the OI period.

Consideration was given to whether the custody of Child1 and/or Child2 changed since the court order was issued. A regulation agent testified that a check of circuit court records revealed no court orders affecting the custody or parenting arrangement for Child1 and Child2. The regulation agent further testified that he interviewed the father of Child1 and Child2 who reported that he maintained primary custody of his children since the court order dated [REDACTED], 2012, was issued (see Exhibit A, p. 3). The regulation agent also testified that statements by Child1 corroborated that Respondent was not his primary caretaker throughout the alleged OI period.

The evidence established that Respondent was not a primary caretaker for Child1 and Child2 throughout the alleged OI period. Thus, Child1 and Child2 should not have been FAP group members on Respondent's case during the alleged OI period.

MDHHS presented FAP budgets demonstrating how an OI was calculated. The OI budgets calculated Respondent's proper monthly issuance by removing Child1 and Child2 as group members. A regulation agent credibly testified that the OI budgets did not change any other FAP factors from Respondent's original budgets. The budgets

factored Respondent's actual issuances from the OI period. A total OI of \$ [REDACTED] was calculated for the OI period.

Presented evidence established that improper inclusion of Child1 and Child2 as group members caused an OI of \$ [REDACTED] from March 2013 through July 2015. Thus, MDHHS established an OI of \$ [REDACTED] against Respondent. MDHHS also alleged that the OI was caused by an 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 alleged that Respondent committed an IPV by intentionally misreporting Child1 and Child2 as full-time household members. The evidence was consistent with MDHHS' allegation.

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.

Under penalties of perjury, Respondent reported to MDHHS in writing on March 5, 2013; May 7, 2014; and April 29, 2015, that Child1 and Child2 were household members for 30 days per month. Respondent's reporting to MDHHS contradicted the evidence which established that Respondent was only authorized parenting time of seven hours per week with Child1 and Child2. Respondent's written misreporting was persuasive evidence that Respondent intentionally failed to provide information which was needed by MDHHS to issue a proper benefit amount. There was no evidence that Respondent was limited in understanding the clear and correct reporting requirements.

It is found MDHHS clearly and convincingly established Respondent committed an IPV by misreporting group members. MDHHS alleged that the IPV justified imposing a disqualification period against Respondent.

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 Respondent's disqualification history (Exhibit A, p. 139) which verified a previous IPV against Respondent beginning March 2005. Respondent's previous IPV justifies imposing a 2-year disqualification period against Respondent.

### **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 total overissuance of \$██████ in FAP benefits from March 2013 through July 2015 due to an IPV. The MDHHS request to establish an overissuance and a 2-year 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

**DHHS**

Laura Bensinger  
MDHHS-Eaton-Hearings

**Petitioner**

MDHHS-OIG-Hearings

**Respondent**

[REDACTED]  
[REDACTED]  
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M Shumaker  
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