



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] TX [REDACTED]

Date Mailed: October 10, 2018
MAHS Docket No.: 18-006003
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 scheduled for September 12, 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 Dana Mikko, 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 14, 2016, Respondent submitted to MDHHS an application for Family Independence Program (FIP) benefits. Respondent's application reported household members including her daughter, with a date of birth of

██████████ 2006 (hereinafter, "Child"). Respondent reported she was homeless and used a mailing address on ██████████ (Exhibit A, pp. 60-104)

2. On October 18, 2016, MDHHS received documentation from Child's school. Child's residential and mailing street was ██████████. Respondent was listed as the person responsible for Child and who resided with Child. (Exhibit A, pp. 105-106)
3. On February 3, 2017, Respondent submitted to MDHHS an application for Food Assistance Program (FAP) benefits. Respondent's application reported that household members included Child. (Exhibit A, pp. 11-59)
4. On April 1, 2017, a lease was signed between Child's grandparents and a landlord. The lease concerned a ██████████ address. The lease authorized only Child's grandparents and Child as persons who could live at the rental unit. (Exhibit A, pp. 110-128)
5. On May 19, 2017, Child's school completed documentation stating that Child resided on ██████████. Child's first contact was her grandmother. Child's second listed contact was her aunt. (Exhibit A, pp. 106-108)
6. From October 2016 through March 2017, Respondent received \$██████████ in FIP benefits. (Exhibit A, pp. 130-131.) Respondent's FIP eligibility was based on a group which included Child.
7. On June 13, 2018, MDHHS calculated that Respondent received an OI of \$██████████ in FIP benefits from October 2016 through March 2017 due to Child's improper inclusion in Respondent's FIP group. (Exhibit A, pp. 132-154)
8. On June 18, 2018, MDHHS requested a hearing to establish that Respondent received OIs of \$██████████ in FIP benefits from October 2016 through March 2017 and \$██████████ in FAP benefits from February 2017 through July 2017. MDHHS also requested a hearing to establish that Respondent committed an IPV justifying imposing a one-year disqualification period. (Exhibit A, p. 1)
9. As of the date of hearing, Respondent had no 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 OIs of \$[REDACTED] in FAP benefits from February 2017 through July 2017 and \$[REDACTED] in FIP benefits from October 2016 through March 2017. Both OIs were based on Respondent's alleged misreporting of Child as a member of Respondent's household. 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 an MDHHS action to identify and recover a benefit overissuance. BAM 700 (January 2016), pp. 1-2.¹

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 alleged that Respondent did not live with Child during periods that Respondent received FAP and FIP benefits. MDHHS presented multiple school documents listing Child as a resident at Child's grandparents' home; the address was not reported by Respondent as her personal address. MDHHS also presented a lease listing Child as one of only three persons authorized to live at the rental property; notably, Petitioner was not among the persons authorized to live at the residence. Given the evidence, MDHHS established that Child did not reside with Respondent during the alleged OI periods.

Concerning the alleged FAP OI, MDHHS did not provide corresponding budgets or Respondent's issuance history.² The evidence was insufficient to establish that MDHHS properly calculated an OI of FAP benefits. Thus, MDHHS will be denied their request to establish a FAP benefit OI.

Concerning FIP benefits, MDHHS presented FIP-OI budgets which calculated an OI of \$[REDACTED] in FIP benefits from October 2016 through March 2017. MDHHS testimony indicated the presented budgets mirrored budgets corresponding to Respondent's

¹ See also 7 CFR 273.18(c)(1)(ii) for the corresponding federal regulations.

² In their hearing packet, MDHHS provided a set of FIP-OI budgets and a second set of OI budgets. The second set of OI budgets were actually duplicate FIP budgets.

original issuances except for removal of Child as a group member. The budgets appeared to properly calculate the OI of benefits received by Respondent.

It is found that MDHHS established that Respondent received an OI of FIP benefits of \$■■■ from October 2016 through March 2017. 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. 1.³

IPV is suspected when there is **clear and convincing** 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 Child as a household member. The evidence was consistent with MDHHS' allegation.

On September 14, 2016, and February 3, 2017, Respondent reported residency with Child. School documentation sufficiently established that Child was not living with Respondent as of October 2016, and most likely from the beginning of the school year and through at least April 2017. The evidence established that Respondent misreported Child's household.

The application completed by Respondent in February 2017 stated that Respondent's signature was certification, subject to penalties of perjury, that all reported statements were 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.

³ See also 7 CFR 253.8 for the corresponding federal regulations.

The evidence established that Respondent misreported, in writing, Child's household. Respondent's misreporting directly led to an OI of FIP benefits. Generally, a client's written statement which contradicts known facts resulting in an OI is clear and convincing evidence of an intent to commit 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. 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. 16.⁴


MDHHS did not allege that Respondent previously committed an IPV. Thus, a one-year disqualification period is justified. As MDHHS did not establish a FAP-related OI, a disqualification for FAP periods is not justified.

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 a FAP-related IPV. MDHHS also failed to establish that Respondent received an OI of \$█ in FAP benefits from February 2017 through July 2017. The MDHHS requests to establish a FAP overissuance and corresponding IPV disqualification against Respondent are **DENIED**.

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 \$█ in FIP benefits from October 2016 through March 2017. The MDHHS requests to establish a FIP overissuance and corresponding one-year disqualification period against Respondent are **APPROVED**.

CG/



Christian Gardocki
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

⁴ See also 7 CFR 253.8 (b) for the corresponding federal regulations.

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

Amber Gibson
MDHHS-Ingham-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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