



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 14, 2020
MOAHR Docket No.: 19-008974
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION FOR
INTENTIONAL PROGRAM VIOLATION AND RECIPIENT CLAIM**

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 December 19, 2019, from Detroit, Michigan. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled hearing time. MDHHS was represented by Chad Essebaggers, regulation agent with the Office of Inspector General. Respondent did not participate in the hearing.

ISSUES

The first issue is whether MDHHS established a recipient claim against Respondent for allegedly overissued Food Assistance Program (FAP) 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.

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 May 5, 2014, Respondent married [REDACTED] (hereinafter, "Spouse").

2. From April 5, 2018, through July 5, 2018, Spouse received worker's compensation income of \$563.37 per week. Spouse received additional worker's compensation pays of \$321.93 on July 9, 2018, \$671.57 on July 26, 2018, and \$241.44 on July 26, 2018. Exhibit A, pp. 114-116.
3. On January 2, 2016, Respondent and Spouse signed a lease as cotenants. Exhibit A, pp. 32-37.
4. On April 16, 2018, Respondent submitted to MDHHS an application requesting FAP benefits. **Respondent reported residency at [REDACTED] [REDACTED] (hereinafter, "Address1").** Respondent reported a household including herself and a minor child; Spouse was not listed as a household member. Respondent circled "N" in response to a question asking if she was married. Boilerplate language stated that the client's application signature was certification that all reported information in the application was true.
5. On April 16, 2018, Respondent submitted to MDHHS a handwritten document titled "Rental Agreement". The document stated that Respondent and her son paid \$350 per month for rent. Spouse signed the document on the bottom as an unspecified individual.
6. On June 17, 2018, a regulation agent went to Respondent's home to investigate whether Spouse lived with Respondent. A regulation agent spoke with Respondent's teenage son who reported that Spouse lives in the household and that he has lived with Respondent for the last 3-4 years. Exhibit a, pp. 28-29.
7. From April 2018 through July 2018, Respondent received a total of \$1,211 in FAP benefits. Exhibit A, p. 118. Respondent's benefit eligibility did not factor Spouse as a group member or Spouse's income from Employer.
8. On July 23, 2019, MDHHS calculated that Respondent received an overissuance (OI) of \$1,211 in FAP benefits from April 2018 through July 2018 (hereinafter, "OI period"). The OI calculation factored Spouse as a group member and his actual income from Employer for each benefit month. An OI totaling \$1,211 was calculated. Exhibit A, pp. 119-140.
9. On [REDACTED], 2019, MDHHS requested a hearing to establish a recipient claim of \$1,211 for FAP benefits allegedly overissued to Respondent from April 2018 through July 2018. MDHHS also requested a hearing to establish that Respondent committed an IPV justifying imposing a 1-year disqualification period. Exhibit A, pp. 1-6.
10. 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 an OI of \$1,211 in FAP benefits from April 2018 through July 2018. 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. BAM 700 (January 2016), pp. 1-2. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. *Id.* Recoupment is an MDHHS action to identify and recover a benefit overissuance. *Id.*

Federal regulations refer to overissuances as "recipient claims" and mandate states to collect them. 7 CFR 273.18(a). Federal regulations dictate that recipient claim amounts not caused by trafficking are calculated by determining the correct amount of benefits for each month there was an OI and subtracting the correct issuance from the actual issuance.¹ CFR 273.18(c)(1). MDHHS may request hearing to establish a debt and/or a disqualification period. BAM 600 (October 2018) p. 5. BEM 556 outlines the method for how FAP benefits and overissuance are calculated.

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 (January 2017), p. 1. Spouses who are legally married and live together must be in the same benefit group. BEM 212 (January 2017) p. 1.

Respondent applied for FAP benefits in April 2018 and reported that Spouse was not a household member. Based on Respondent's reporting, MDHHS issued FAP benefits to Respondent as a group which excluded Spouse and his income. MDHHS alleged that all FAP issuances to Respondent were improper because Spouse was in Respondent's household. Thus, to establish an OI, MDHHS must establish that Respondent resided with Spouse during the OI period.

¹ Additionally, MDHHS is to subtract any benefits that were expunged (i.e., unused benefits which eventually expire from non-use). Expungement of benefits was not relevant in the present case.

MDHHS testimony credibly indicated that a search of county records revealed that Respondent married Spouse on May 5, 2014. MDHHS' testimony was consistent with life insurance documents of Spouse dated March 8, 2017, which listed Respondent as married to Spouse; Spouse and Respondent also had identical addresses listed. Exhibit A, pp. 62-65. Undated employment records of Spouse also listed him as married to Respondent. Exhibit A, pp. 66-67. Additionally, MDHHS presented a school record from 2016 for Respondent's son which listed Spouse as a parent/guardian. Exhibit A, pp. 38-39. Respondent's son's school record from December 2016 also listed Spouse as his stepfather. Exhibit A, pp. 30-31. MDHHS presented a lease signed by Respondent and Spouse on December 6, 2017; Spouse and Respondent signed the lease as co-tenants. Exhibit A, pp. 32-37.

Documentary evidence established that Respondent and Spouse were married in 2014. Additionally, the evidence established that Spouse and Respondent cohabitated as of March 2017 and December 2017. MDHHS presented additional evidence to establish that Respondent lived with Spouse during the OI period.

MDHHS presented an investigation report dated June 21, 2018. A regulation agent testified that he authored the report and conducted an investigation based on a complaint that Respondent failed to report that Spouse lived with her. The report documented that fraud by Respondent was suspected after Respondent applied for State Emergency Relief seeking money to halt an eviction and Spouse was listed as a cotenant. Previously, Respondent submitted documentation to MDHHS implying that someone with the name of Spouse was Respondent's landlord. Exhibit A, p. 26.

The regulation agent testified that, as part of his investigation of respondent, he went to Respondent's address on June 7, 2018. The agent testified that Respondent's son answered the door. The regulation agent documented that Respondent's son stated that Spouse was married to Respondent and they have all lived together for the past 3-4 years.

The evidence established that Respondent and Spouse lived together throughout the OI period. Thus, Spouse should have been a member with Respondent in the FAP group. Also, Spouse's income should have been factored.

MDHHS presented FAP-OI budgets from April 2018 through July 2018 demonstrating how an OI was calculated. Exhibit A, pp. 119-140. MDHHS properly factored Respondent's actual issuances from the OI period which totaled \$1,211. Exhibit A, p. 118. In compliance with policy, the FAP-OI budgets factored Spouse's actual gross unearned income (Exhibit A, pp. 112-115) and converted the weekly pays to a monthly income. BAM 715 (October 2017) p. 8. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of \$1,211 was properly calculated.

The evidence established that Spouse lived with Respondent throughout the OI period. The evidence also established that Respondent received an OI of \$1,211 due to Respondent's failures to report Spouse as a household member and his unearned

income. Thus, MDHHS established a recipient claim of \$1,211 against Respondent. MDHHS further alleged that the overissuance was caused by IPV.

The types of recipient claims are those caused by agency error, unintentional recipient claims, and IPV. 7 CFR 273.18(b). An IPV shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or Electronic Benefit Transfer (EBT) cards. 7 CFR 273.16(c).

An IPV requires clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an IPV. 7 CFR 273.16(e)(6). Clear and convincing evidence must be strong enough to cause a clear and firm belief that the proposition is true; it is more than proving that the proposition is probably true. 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 established that Respondent received an overissuance of \$1,211 due to Spouse not being included as a group member. For an IPV, MDHHS must establish that Respondent's failure to report Spouse as a group member was intentional.

MDHHS presented Respondent's application dated April 16, 2018. Exhibit A, pp. 10-23. Respondent reported only household members of herself and her son. As the evidence established that Respondent lived with spouse, Spouse's omission from the application as a household member is compelling proof of a fraudulent intent.

Two other reportings by Respondent were consistent with fraud. Respondent's application dated April 16, 2018, reported that she was unmarried. No evidence suggested that Respondent was not married to Spouse at the time she applied for FAP benefits. Respondent's failure to report her marriage is consistent with an intent to defraud.

Also, Respondent submitted to MDHHS a handwritten verification of her rent when she applied for FAP benefits on April 16, 2018. The document stated that Respondent and her son paid \$350 per month for rent. Spouse's name was listed separately. In the context of the document, Spouse appeared to be listed as Respondent's landlord. There would be no plausible reason for Respondent to report Spouse as a landlord unless her intent was fraudulent.

The evidence clearly and convincingly established that Respondent purposely failed to report Spouse as a household member for the purpose of receiving an OI of FAP benefits. Thus, the evidence clearly and convincingly established that Respondent committed an IPV.

Individuals found to have committed an IPV shall be ineligible to receive FAP benefits. 7 CFR 273.16(b). The standard disqualification period is used in all instances except when a court orders a different period. IPV penalties are as follows: one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. *Id.* and BAM 725 (January 2016), p. 16.

MDHHS did not allege a previous IPV by Respondent Thus, a 1-year disqualification is proper for Respondent's first IPV.

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 an overissuance of \$1,211 in FAP benefits from April 2018 through July 2018 due to an IPV. The MDHHS requests to establish a recipient claim of \$1,211 and a one-year disqualification against Respondent are **APPROVED**.

CG/cg



Christian Gardocki
Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Email:

MDHHS-Ottawa-70-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

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