



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: October 26, 2016
MAHS Docket No.: 15-026709
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 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 October 6, 2016, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], regulation agent with the Office of Inspector General. Respondent did not appear.

ISSUES

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

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

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Respondent was an ongoing recipient of Food Assistance Program (FAP) benefits from the State of Michigan.

2. Respondent began employment with an employer (Employer #1) during the third quarter of 2014.
3. Respondent failed to timely report to MDHHS employment income from Employer #1.
4. Respondent received a total of [REDACTED] from Employer #1 in the 4th quarter of 2014.
5. Factoring Respondent's unreported income caused Respondent to receive an OI of [REDACTED] in FAP benefits from October 2014 through December 2014.
6. Respondent began employment with a second employer (Employer #2) in February 2015 and continued receiving various pays through at least June 2015.
7. Respondent failed to timely report to MDHHS employment income from Employer #2.
8. Factoring Respondent's unreported income caused Respondent to receive an OI of [REDACTED] in FAP benefits from April 2015 through June 2015.
9. Respondent unintentionally failed to report employment income to MDHHS.
10. On [REDACTED], MDHHS requested a hearing to establish Respondent committed an IPV and received an OI of [REDACTED] in FAP benefits for the months of October 2014 through December 2014 and April 2015 through June 2015.

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 requested a hearing, in part, to establish Respondent received an overissuance of benefits. MDHHS presented an Intentional Program Violation Repayment Agreement (Exhibit 1, pp. 5-6) alleging Respondent received over-issuances in FAP benefits of [REDACTED] from October 2014 through December 2014 and [REDACTED] in FAP benefits from April 2015 through June 2015. The repayment agreement, along with MDHHS testimony, alleged the OIs were based on Respondent's failure to timely report employment income from two different employers.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2016), p. 11. Changes must be reported within 10 days of receiving the first payment reflecting the change. *Id.*

MDHHS presented Respondent's application (Exhibit 1, pp. 11-38) signed and dated by Respondent on June 2, 2014. The presented application verified Respondent was advised of reporting responsibilities.

MDHHS presented Respondent's FAP benefit issuance history from the State of Michigan (Exhibit 1, p. 40). The history listed Respondent received [REDACTED] in FAP benefits for each month from October 2014 through December 2014.

MDHHS presented an Employee Wage Match History by Recipient ID (Exhibit 1, p. 39). Respondent's wage history listed employment income from Employer #1 from the third quarter of 2014 through the first quarter of 2015. The document also listed employment income from Employer #2 for the first two quarters of 2015.

MDHHS presented OI budgets (Exhibit 1, pp. 42-47) for each month from October 2014 through December 2014. Unreported employment income of [REDACTED] (the average monthly income of Respondent's 4th quarter earnings in 2014) was factored for each budget. A benefit issuance of \$0 was calculated for each month after factoring Respondent's unreported earnings.

MDHHS presented Respondent's FAP benefit issuance history from the State of Michigan (Exhibit 1, p. 51). The history listed Respondent received \$194 in FAP benefits for each month from April 2015 through June 2015.

MDHHS presented documents from "TheWorkNumber" (Exhibit 1, pp. 48-50) dated [REDACTED]. TheWorkNumber is a known internet site that MDHHS can utilize to obtain a client's employment information. Various weekly pays to Respondent from Employer #2 were listed. The first listed pay was [REDACTED]. The pays continued through the end of October 2015.

MDHHS presented OI budgets (Exhibit 1, pp. 52-58) for each month from April 2015 through June 2015. MDHHS appeared to factor Respondent's actual income as listed on TheWorkNumber documentation. The income was factored as unreported by Respondent. The budgets calculated Respondent was eligible to receive a total of [REDACTED] over the period from April 2015 through June 2015.

MDHHS policy categorizes overissuances into 3 different types: client error, agency error, and intentional fraud (see BAM 700). Client and Agency errors are not pursued if the estimated amount is less than \$250 per program. BAM 700, p. 9.

MDHHS alleged Respondent failed to timely report the employment to MDHHS. The allegation was based, in part, on the absence of income budgeted from Employer #1 and Employer #2 as part of Respondent's original FAP benefit issuances during the alleged OI period. The allegation was also based, in part, on an absence of reporting documented in Respondent's case file. A regulation agent testified a search of Respondent's case file revealed no indication of Respondent timely reporting employment income with Employer #1 or Employer #2. The testimony is not definitive evidence that Respondent failed to timely report employment income, however, Respondent did not appear to rebut the testimony, nor was superior evidence available.

It is found Respondent failed to timely report employment income concerning Employer #1 and Employer #2. It is further found MDHHS established FAP benefit OIs of [REDACTED] for the period from October 2014 through December 2015, and [REDACTED] for the period from April 2015 through June 2015. The analysis will proceed to determine if the OI was caused by an IPV by Respondent.

The Code of Federal Regulations defines an IPV. Intentional program violations 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 the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system. 7 CFR 273.16 (c).

DHS regulations list the requirements for an IPV. 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 (1/2011), 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 Respondent failed to report employment information to MDHHS for the purpose of receiving FAP benefits for which Respondent was not entitled; this was established. MDHHS also contended the failure was purposeful and intentional.

It is notable that Respondent's failure to report employment information could reasonably be explained by Respondent forgetting to report information. Though MDHHS demonstrated Respondent was advised of reporting requirements at application (see Exhibit 1, p. 19) it does not insure that a client would not accidentally forget.

It is mildly persuasive that two different OIs from two different employers occurred. The separate OIs arguably establish a pattern by Respondent in failing to report employment information. On the other hand, unbudgeted income could also support a finding that MDHHS failed twice to budget income. Though it has already been found that Respondent was at fault for the error, the finding was not based on the higher standard required of IPV's.

It is notable that the established OI periods were fairly brief (3 months in length). Generally, it is more likely that a failure to report was unintentional when the resulting OI is for a shorter period of time. This consideration somewhat supports finding that an IPV did not occur.

Generally, MDHHS will have difficulty in establishing a purposeful failure to report information because there is typically no documentation to verify an IPV occurred. For example, MDHHS conceded Respondent did not submit documentation to MDHHS which was contradictory to known facts. Presented evidence was not persuasive in overcoming the general rule.

It is found MDHHS failed to clearly and convincingly establish that Respondent committed an IPV. Accordingly, it is found MDHHS may not proceed with disqualifying Respondent from benefit eligibility.

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 [REDACTED] in over-issued FAP benefits from October 2014 through December 2014 and [REDACTED] in over-issued FAP benefits from April 2015 through June 2015. The MDHHS request to establish an overissuance is **APPROVED**.

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 related to an OI of FAP benefits due to unreported income for the months from October 2014 through December 2014 and/or April 2015 through June 2015. The MDHHS request to establish Respondent committed an IPV is **DENIED**.



CG/hw

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) 335-6088; 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

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]