RICK SNYDER GOVERNOR

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

SHELLY EDGERTON

Date Mailed: December 9, 2016
MAHS Docket No.:
Agency No.:
 Petitioner:
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 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 the matter of the matte

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).

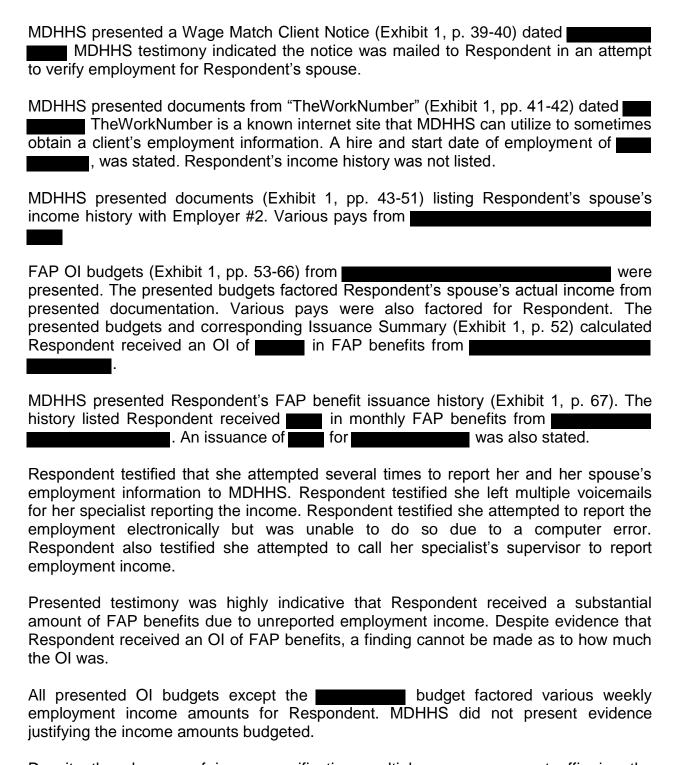
FINDINGS OF FACT

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. From _____, Respondent's spouse received employment income.

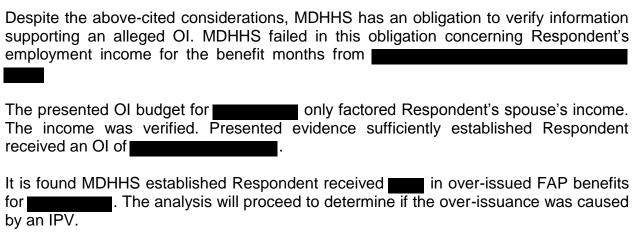
3. Respondent began employment on		
4. Respondent's employment income was not verified.		
5. From, it is unknown if Respondent received an OI of FAP benefits.		
6. Respondent received an OI of in FAP benefits for		
7. On, MDHHS requested a hearing to establish Respondent committed an IPV and received an OI of in FAP benefits for the months from		
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 400.1119b, and Mich Admin Code, R 400.30013011. 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) dated The unsigned agreement alleged Respondent received an over-issuance of in FAP benefits from The document, along with MDHHS testimony, alleged the OI was based on Respondent's failure to timely report employment income.		
When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (January 2016), p. 1. An overissuance [bold lettering removed] is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. <i>Id.</i> Recoupment [bold lettering removed] is a MDHHS action to identify and recover a benefit overissuance. <i>Id.</i> , p. 2.		
Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2016), p. 11. Changes [in income] must be reported within 10 days of receiving the first payment reflecting the change. <i>Id</i> .		
MDHHS presented a Wage Match Client Notice (Exhibit 1, pp. 37-38) dated		

employment for Respondent.



Despite the absence of income verification, multiple reasons support affirming the calculated OI. First, Respondent appeared for the hearing and did not claim the amounts were inaccurate. Secondly, Respondent's spouse's employment income was so substantial (and verified) that Respondent might have been ineligible for FAP

benefits because of that income alone. Thirdly, evidence was suggestive that Respondent did not report her or her spouse's income despite her claims to the contrary.



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).

[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. <u>Black's Law Dictionary</u> 888 (6th ed. 1990).

MDHHS presented Respondent's application for FAP benefits (Exhibit 1, pp. 11-28) dated _______. The application was noted to be electronically submitted to MDHHS. Respondent's signature was noted to be certification that Respondent read various stated client responsibilities listed elsewhere within the application booklet. The stated responsibilities include reporting to MDHHS any changes within 10 days of their occurrence (though the pages stating the responsibilities were not presented).

MDHHS presented a Notice of Case Action (Exhibit 1, pp. 29-33) dated ______. The notice approved Respondent for FAP benefits beginning ______. The notice included boilerplate language reminding Respondent to report changes within 10 days (see Exhibit 1, p. 33).

MDHHS presented a blank Change Report (Exhibit 1, pp. 34-36) dated The document included language advising Respondent to report all changes within 10 days.

In the OI analysis, it was noted that Respondent's claim of reporting employment was not persuasive. It is improbable that Respondent was unable to report employment to her specialist, her specialist's supervisor, and/or electronically. Despite the improbability of Respondent's testimony, it is not an impossible occurrence.

MDHHS did not present written documentation from Respondent which contradicted known facts. Generally, MDHHS will have difficulty in establishing a clear and convincing purposeful failure to report information when there is not written documentation from a respondent which contradicts known facts. Presented evidence was not persuasive in overcoming the general rule.

Though presented evidence of an OI was compelling, it is not found to be clear and convincing evidence of 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 of law, finds that MDHHS established that Reference is APPROVED.	espondent received in over-issued
The administrative law judge, based upon the law, finds that MDHHS failed to establish that	Respondent received an OI of in
FAP benefits from	. The MDHHS request to

establish an IPV against Respondent and/or an OI of in FAP benefits from is **DENIED**.

CG/hw

Christian Gardocki

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

Christin Dordock

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	
Petitioner	
Respondent	