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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: December 16, 2016
MAHS Docket No.: ██████████
Agency ██████████
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 ██████████, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by ██████████, regulation agent with the Office of Inspector General. Respondent appeared and was unrepresented.

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) and Child Development and Care (CDC) benefits from the State of Michigan.

2. Respondent received a total of [REDACTED] in CDC benefits over 3 benefit months ([REDACTED]).
3. Respondent's employment income exceeded CDC income limits in [REDACTED].
4. MDHHS failed to establish Respondent received an OI of FAP benefits from [REDACTED].
5. On [REDACTED] MDHHS requested a hearing to establish Respondent committed an IPV and received an OI of [REDACTED] in CDC benefits and [REDACTED] in FAP benefits from [REDACTED].

CONCLUSIONS OF LAW

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. MDHHS administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

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. 6-7) dated [REDACTED] [REDACTED] [REDACTED]. The repayment agreement (unsigned by Respondent) alleged Respondent received an over-issuance of [REDACTED] in CDC benefits and [REDACTED] in FAP benefits. Both OIs allegedly occurred from [REDACTED]. The repayment agreement, along with MDHHS testimony, alleged the OIs were 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. *Id.* Recoupment [bold lettering removed] is a MDHHS action to identify and recover a benefit overissuance. *Id.*, 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. *Id.*

MDHHS presented a Notice of Case Action (Exhibit 1, pp. 36-42) dated [REDACTED]. The notice informed Respondent of an approval of CDC benefits from [REDACTED], through [REDACTED] forward. FAP eligibility was approved beginning [REDACTED].

MDHHS presented a Simplified Six Month Review form (Exhibit 1, p. 43) dated [REDACTED]. The form advised Respondent to report changes in earned income of [REDACTED] or more.

MDHHS presented a Verification of Employment (Exhibit 1, pp. 44-45). The form was dated [REDACTED] and presumably completed by Respondent's employer.

MDHHS presented a history of Respondent's employment income history with her employer (Exhibit 1, pp. 46-51). The history included Respondent's gross income for biweekly pay periods from [REDACTED], through [REDACTED]. Respondent's monthly income totaled as follows: [REDACTED] (3 pays), [REDACTED]

[REDACTED] Respondent's lone verified pay from [REDACTED] was for [REDACTED]

In their attempt to establish an OI of FAP benefits, MDHHS alleged Respondent failed to report an increase in employment income. MDHHS alleged the increase, was more than [REDACTED] and increased Respondent's total income to beyond the simplified reporting limit. For purposes of the analysis, all of the MDHHS allegations will be accepted.

MDHHS presented a partial history of Respondent's FAP benefit eligibility (Exhibit 1, p. 52). The history listed monthly [REDACTED] FAP benefit issuance to Respondent from [REDACTED].

MDHHS presented an Issuance Summary (Exhibit 1, p. 53) and monthly OI FAP budgets (Exhibit 1, pp. 54-63). The budgets appeared to properly factor Respondent's actual employment income as listed on presented earnings.

It is notable that presented FAP OI budgets factored all of Respondent's employment income to be unreported. [MDHHS is to not allow a 20% earned income deduction when determining overissuances due to a client failure to report earned income (see BEM 720 Intentional Program Violation). BEM 556 (July 2013) p. 3.

If Respondent only failed to report an income increase, then some of Respondent's income was reported. If some of Respondent's income was reported, then Respondent was entitled to a portion of the 20% employment credit. MDHHS cannot fully deprive Respondent of an employment income credit when it was not disputed that some unstated portion of income was reported. Also problematic is that MDHHS did not establish how much of Respondent's income was unreported.

It is found MDHHS failed to establish an OI of FAP benefits. The analysis will proceed to determine if MDHHS established that Respondent received an OI of CDC benefits.

CDC program groups in the income eligible group must have gross income that falls within the income scale below to be eligible for subsidy benefits. RFT 270 (August 2014), p. 1. A chart goes on to list [REDACTED] as the maximum monthly income allowed for a 2-person CDC group. Eligibility for CDC for income-eligible ends the earliest of the following:

- The requirements are no longer met.
- The family has excess income.
- The need no longer exists.

MDHHS presented various CDC budgets and budget documents (Exhibit 1, pp. 64-86) from [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. The presented budgets established Respondent's income exceeded the CDC income limit for the benefit months of [REDACTED]
[REDACTED]

Unlike FAP budgets, CDC budgets give no credit for reported income. Thus, the alleged OI of CDC benefits cannot be dismissed due to MDHHS' failure to distinguish between reported and unreported income.

Consideration was given to whether MDHHS can terminate CDC benefit eligibility during a period of CDC eligibility. No known policy prevents CDC termination in the middle of a benefit period.

Consideration was given to whether MDHHS can establish an OI for an agency error (assuming there was an agency error). Client and Agency [CDC] errors are not pursued if the estimated amount is less than [REDACTED] per program. BAM 705 (January 2016), p. 1. The present case concerns an error exceeding [REDACTED]; thus, an OI may be established no matter which party was at fault.

It is found MDHHS established an OI of CDC benefits in the amount of [REDACTED] for payments made in [REDACTED]. The analysis will proceed to determine if the OI was caused by an IPV.

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. Black's Law Dictionary 888 (6th ed. 1990).

MDHHS alleged Respondent purposely failed to report increases in income for the purpose of receiving more benefits than authorized by MDHHS policy. MDHHS presented evidence to support the allegation.

MDHHS presented Respondent's handwritten Assistance Application (Exhibit 1, pp. 11-30) signed by Respondent on [REDACTED]. A request for FAP benefits was indicated. The application stated that Respondent's signature was certification that Respondent reviewed and agreed with the application's Information Booklet; the Information Booklet, among other items, advises the client to report changes within 10 days.

MDHHS presented Respondent's Child Development and Care (CDC) Application (Exhibit 1, pp. 31-35) signed by Respondent on [REDACTED]. The application contained boilerplate language informing the applicant of a requirement to "report to the DHS specialist who handles my ... CDC... case any changes within 10 work days of the change." Income was subsequently listed as an example of a required change.

If Respondent failed to report an income increase, the failure could be explained by Respondent forgetting. Though clients often sign forms acknowledging awareness of a

reporting requirement, a client's signature does not ensure that a client would not accidentally forget.

Generally, MDHHS will have difficulty in establishing a purposeful failure to report information because there is typically no documentation to verify an IPV occurred. This is particularly true after factoring that an IPV requires "clear and convincing" evidence. 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 CDC benefits from [REDACTED]. The MDHHS request to establish an overissuance of CDC benefits 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 received an OI of [REDACTED] in FAP benefits from [REDACTED]. It is further found that MDHHS failed to establish that Respondent committed an IPV. The MDHHS request to establish Respondent committed an IPV and to establish an overissuance of FAP benefits 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]
[REDACTED]
[REDACTED]

[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]