



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: November 2, 2016
MAHS Docket No.: 16-006464
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 20, 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 receiving employment income from an employer (Employer) beginning April 2014.
3. Respondent failed to timely report to MDHHS employment income from Employer.
4. Factoring Respondent's unreported employment income caused Respondent to receive an OI of [REDACTED] in FAP benefits from June 2014 through September 2014.
5. Respondent's failure to report employment income was intentional.
6. On [REDACTED], MDHHS requested a hearing to establish Respondent committed an IPV and received an OI of [REDACTED] in FAP benefits from June 2014 through September 2014.

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. 6-7) alleging Respondent received an over-issuance of [REDACTED] in FAP benefits from June 2014 through September 2014. The repayment agreement, along with MDHHS testimony, alleged the OI was based on Respondent's failure to timely report employment income from an employer.

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. 13-31) electronically signed and dated by Respondent on [REDACTED]. The application states that a signature is an agreement to understanding reporting responsibilities.

MDHHS presented a Notice of Case Action (Exhibit 1, pp. 32-37) dated [REDACTED], [REDACTED]. The notice was mailed to Respondent to inform her of an approval of FAP benefits. The notice included a section on reporting changes within 10 days.

MDHHS presented a Change Report (Exhibit 1, pp. 38-39) dated [REDACTED]. The document was presumably mailed to Respondent with the Notice of Case Action. The document instructed Respondent to report changes using the Change Report, or alternatively, to call her assigned specialist.

MDHHS presented Respondent's application (Exhibit 1, pp. 40-53) electronically signed and dated by Respondent on [REDACTED]. Boilerplate application language stated that a signature is an understanding that all application statements are subject to penalty of perjury and true to the best of the signer's ability. Respondent reported no employment income on the application.

MDHHS presented a Verification of Employment (Exhibit 1, pp. 54-55) with an attached payment history for Respondent (Exhibit 1, p. 56). Various weekly pays from [REDACTED], [REDACTED], were listed. The pays combined to exceed [REDACTED].

MDHHS presented Respondent's FAP benefit issuance history from the State of Michigan (Exhibit 1, p. 68). The history listed Respondent received a total of [REDACTED] in FAP benefits during the alleged OI period. MDHHS testimony indicated Respondent's FAP benefit issuances did not factor Respondent's income from Employer.

MDHHS presented OI budgets (Exhibit 1, pp. 60-67) for each month from June 2014 through September 2014. Unreported employment income from Respondent's pay history with Employer was factored. A total benefit issuance of [REDACTED] for the alleged OI period, in part, based on Respondent's actual child support income (see Exhibit 1, pp. 57-58).

MDHHS presented an OI summary (Exhibit 1, p. 59). The difference between Respondent's actual FAP benefit issuances and corrected FAP benefit issuances from June 2014 through September 2014 was calculated to be [REDACTED]

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 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. The testimony is not definitive evidence that Respondent failed to timely report employment income, however, Respondent did not appear to rebut the testimony. MDHHS further bolstered the allegation of non-reporting by presenting Respondent's application from October 2014 which failed to list employment income.

It is found Respondent failed to timely report employment income. It is further found MDHHS established a FAP benefit OI of [REDACTED] from June 2014 through September 2014. 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).

[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 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 multiple times, it does not insure that a client would not accidentally forget.

Generally, the best evidence of intentional misreporting is a written statement contradicting known facts. MDHHS presented evidence verifying just that with

Respondent's application from October 2014. A failure to report employment information within an application is compelling evidence of an intent to deceive.

The application's lack of reported income is admittedly not direct evidence that Respondent previously failed to report employment income. Nevertheless, a client's failure to report ongoing income dramatically increases the likelihood that the client failed to report the start of the income.

It is found MDHHS clearly and convincingly established that Respondent committed an IPV. Accordingly, it is found MDHHS may 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 June 2014 through September 2014. The MDHHS request to establish an overissuance and an IPV against Respondent is **APPROVED**.

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

Petitioner

[REDACTED]

DHHS

[REDACTED]

[REDACTED]

Respondent

[REDACTED]