



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 16, 2016

MAHS Docket No.: 16-007854

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 26, 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 (hereafter "Employer") in October 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 December 2014 through March 2015.
5. Respondent unintentionally failed to report employment income to MDHHS.
6. On [REDACTED] MDHHS requested a hearing to establish Respondent committed an IPV and received an OI of [REDACTED] in FAP benefits for the months from December 2014 through March 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. 6-7) alleging Respondent received an overissuance of \$1,768 in FAP benefits from December 2014 through March 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 a benefit application (Exhibit 1, pp. 12-30) signed and dated by Respondent on [REDACTED]. The presented application verified Respondent was advised of reporting responsibilities.

MDHHS presented documents from “TheWorkNumber” (Exhibit 1, pp. 37-39) dated [REDACTED]. The documents came from a known internet website MDHHS uses to verify employment information of clients. The documents indicated Respondent received biweekly pays from Employer since [REDACTED], and through [REDACTED], [REDACTED].

MDHHS presented Respondent’s FAP benefit issuance history from the State of Michigan (Exhibit 1, p. 54). The history listed Respondent received [REDACTED] in FAP benefits from December 2014 through February 2015. A FAP benefit issuance of [REDACTED] was listed for March 2015.

MDHHS presented monthly OI budgets (Exhibit 1, pp. 46-53) from December 2014 through March 2015. Respondent’s income with Employer was factored as unreported income. The budgets also factored Petitioner’s actual child support payments (see Exhibit 1, pp. 40-42). A total benefit issuance of \$0 for the alleged OI period was calculated.

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 employment income factored in Respondent’s FAP benefit issuances. The absence of employment could be explained by Respondent not reporting the income, though it is theoretically possible that Respondent reported the income and MDHHS did not process the reporting. MDHHS presented evidence that the absence of income was more likely caused by Respondent’s non-reporting.

MDHHS presented Case Comments – Summary (Exhibit 1, pp. 33-34). The document included notes from Respondent’s specialist. Notes dated [REDACTED] stated Respondent had employment beginning in October 2014. It was further noted that Respondent failed to previously report the employment.

The provided comments from Respondent’s specialist are not definitive evidence of non-reporting by Respondent. The comments were consistent with presented evidence and not rebutted by Respondent. Respondent completed an affidavit (see Exhibit 1, p. 58) but did not claim to have reported her employment to MDHHS. It is found Respondent failed to timely report employment income to MDHHS.

Presented evidence verified Respondent received an OI of [REDACTED] in FAP benefits for the period of December 2014 through March 2015. The OI was established to be caused by Respondent’s non-reporting of income. The analysis will proceed to determine if Respondent’s non-reporting was 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).

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. 30) it does not ensure that a client would not accidentally forget.

The duration and the amount of the OI can sometimes be insightful into determining if an IPV was caused by a failure to report income. An OI period of 4 months is a fairly lengthy period of time for someone to accidentally forget to report employment. It is also notable that the difference between the original and correct benefit issuances was the total amount of FAP benefits issued. Such a large difference is a strong motive for not reporting employment income. The large difference between past benefit issuances and corrected benefit issuances suggests that Respondent knew that income was not being factored in the benefit issuances.

Some consideration was given to Respondent's reporting on a Semi-Annual Contact Report (Exhibit 1, pp. 31-32) dated [REDACTED]. Respondent reported having two different jobs to MDHHS. Though the document was submitted before the subject employment of the present case, reporting two jobs is consistent with honest reporting. The evidence is mildly insightful that Respondent's failure to report subsequent income was accidental.

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. 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 December 2014 through March 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 December 2014 through March 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]