



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

Date Mailed: December 9, 2016
MAHS Docket No.: [REDACTED]
Agency No.: [REDACTED]
Petitioner: [REDACTED]
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 [REDACTED], 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 (hereinafter "Employer #1") on [REDACTED]
3. Respondent received [REDACTED] in employment earnings from a second employer (hereinafter "Employer #2") during the 4th quarter of [REDACTED]
4. Respondent's start date and stoppage date with Employer #2 is unknown.
5. Factoring Respondent's unreported income from Employer #1 resulted in an OI of FAP benefits to Respondent of [REDACTED] from [REDACTED].
6. Respondent unintentionally failed to report employment income to MDHHS.
7. 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 [REDACTED].

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). The agreement (unsigned by Respondent) alleged Respondent received an over-issuance of [REDACTED] in FAP benefits from [REDACTED]. The repayment agreement, along with MDHHS testimony, alleged the OI was based on Respondent's failure to timely report employment income.

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 electronically submitted application (Exhibit 1, pp. 10-39) signed and dated by Respondent on [REDACTED]. The application stated Respondent's signature was certification of an understanding of a responsibility to report changes to MDHHS within 10 days.

MDHHS presented an IG-001 (Exhibit 1, p. 40). MDHHS testimony indicated the report is based on income reported to the Michigan Department of Treasury by employers. The report listed earnings for Respondent from two different jobs beginning the last quarter of [REDACTED]. Employment income for Employer #1 continued through the first two quarters of [REDACTED]. Employment income of [REDACTED] for Employer #2 was listed for the 4th quarter of [REDACTED]. Identical quarterly earnings were also listed for Respondent on an Other Income- Search. (see Exhibit 1, p. 41).

MDHHS presented documents from “TheWorkNumber” (Exhibit 1, pp. 42-43). TheWorkNumber is a website that MDHHS can utilize to sometimes obtain a client’s employment information. Various weekly pays to Respondent from Employer #1 were listed. Respondent’s pay dates ranged from [REDACTED]

MDHHS presented Respondent’s FAP benefit issuance history from the State of Michigan (Exhibit 1, p. 44). The history listed Respondent received [REDACTED] in FAP benefits for each month from [REDACTED]

An Issuance Summary (Exhibit 1, p. 45) and OI budgets (Exhibit 1, pp. 46-61) for the benefit months from [REDACTED] were presented. The OI budgets factored Respondent’s employment income listed on TheWorkNumber documentation. The income was budgeted as “unreported” thereby depriving Respondent of a 20% employment income credit. Presented budgets calculated Respondent received an OI of [REDACTED] for [REDACTED]. An OI of [REDACTED] was calculated for [REDACTED].

The [REDACTED] FAP OI budget also factored [REDACTED] in earnings for Employer #2. The inclusion of income relies on two assumptions.

First, MDHHS assumes that Respondent earned one third of the income in [REDACTED]. The assumption may be favorable for Respondent, but presented information was insufficient to state if it was. If Respondent did not report the information and no better information was available, MDHHS cannot be faulted for budgeting the income in the manner performed.

Secondly, MDHHS assumes had Respondent timely reported the income from Employer #2, the income would have affected Respondent’s FAP eligibility for [REDACTED]. This assumption cannot be justified.

Presented information only verified Respondent earned [REDACTED] in the 4th quarter from [REDACTED] for Employer #2. Information about when Respondent began to receive the earnings was not presented. It is reasonably possible that all of Respondent’s earnings occurred within a single month.

[For FAP benefits, MDHHS is to] act on a change reported by means other than a tape match within 10 days of becoming aware of the change. BAM 220 (July 2015), p. 7. For

income increases that result in a benefit decrease, action must be taken and notice issued to the client within the Standard of Promptness (FAP-10 calendar days...). The effective month is the first full month that begins after the negative action effective date. *Id.*, p. 11.

Respondent would have had 10 days to report a change. MDHHS would have had an additional 10 days to process the change to affect the first full month beginning after the negative action date. The negative action date requires an additional waiting period of at least 11 days (see BAM 220). Thus, there is a minimum period of 32 days from the time income starts to when the first benefit month can be affected. The period is further extended depending on how far the negative action date is away from the end of a calendar month.

Without knowledge of Respondent's starting or stopping employment income dates, it cannot be determined if the income would have affected Respondent's FAP eligibility for [REDACTED]. Thus, MDHHS failed to establish an OI for [REDACTED], the only month when employment income from Employer #2 was factored.

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 [REDACTED] 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 [REDACTED]. 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. 20) it does not insure that a client would not accidentally forget.

A client failure to report employment income from a single employer is conceivably excusable. A failure by a client to report income from two different employers is less excusable. This consideration increases the likelihood that Respondent committed an IPV.

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.

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 [REDACTED]. The MDHHS request to establish an overissuance is **PARTIALLY 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 FAP benefits for [REDACTED]. It is further found that MDHHS failed to establish Respondent committed an IPV based on unreported income for the months from [REDACTED]. The MDHHS request to establish Respondent committed an IPV and received an OI of FAP for [REDACTED] 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]
[REDACTED]