



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]

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 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) benefits from the State of Michigan.
2. From [REDACTED], Respondent's spouse received employment income.

3. Respondent began employment on [REDACTED].
4. Respondent's employment income was not verified.
5. From [REDACTED], it is unknown if Respondent received an OI of FAP benefits.
6. Respondent received an OI of [REDACTED] in FAP benefits for [REDACTED].
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) dated [REDACTED]. The unsigned agreement alleged Respondent received an over-issuance of [REDACTED] in FAP benefits from [REDACTED]. 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. *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 Wage Match Client Notice (Exhibit 1, pp. 37-38) dated [REDACTED]. MDHHS indicated the notice was mailed to Respondent in an attempt to verify employment for Respondent.

MDHHS presented a Wage Match Client Notice (Exhibit 1, p. 39-40) dated [REDACTED] [REDACTED] MDHHS testimony indicated the notice was mailed to Respondent in an attempt to verify employment for Respondent's spouse.

MDHHS presented documents from "TheWorkNumber" (Exhibit 1, pp. 41-42) dated [REDACTED] [REDACTED] TheWorkNumber is a known internet site that MDHHS can utilize to sometimes obtain a client's employment information. A hire and start date of employment of [REDACTED] [REDACTED], was stated. Respondent's income history was not listed.

MDHHS presented documents (Exhibit 1, pp. 43-51) listing Respondent's spouse's income history with Employer #2. Various pays from [REDACTED] [REDACTED]

FAP OI budgets (Exhibit 1, pp. 53-66) from [REDACTED] were presented. The presented budgets factored Respondent's spouse's actual income from presented documentation. Various pays were also factored for Respondent. The presented budgets and corresponding Issuance Summary (Exhibit 1, p. 52) calculated Respondent received an OI of [REDACTED] in FAP benefits from [REDACTED] [REDACTED].

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, p. 67). The history listed Respondent received [REDACTED] in monthly FAP benefits from [REDACTED] [REDACTED]. An issuance of [REDACTED] for [REDACTED] was also stated.

Respondent testified that she attempted several times to report her and her spouse's employment information to MDHHS. Respondent testified she left multiple voicemails for her specialist reporting the income. Respondent testified she attempted to report the employment electronically but was unable to do so due to a computer error. Respondent also testified she attempted to call her specialist's supervisor to report employment income.

Presented testimony was highly indicative that Respondent received a substantial amount of FAP benefits due to unreported employment income. Despite evidence that Respondent received an OI of FAP benefits, a finding cannot be made as to how much the OI was.

All presented OI budgets except the [REDACTED] budget factored various weekly employment income amounts for Respondent. MDHHS did not present evidence justifying the income amounts budgeted.

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.

Despite the above-cited considerations, MDHHS has an obligation to verify information supporting an alleged OI. MDHHS failed in this obligation concerning Respondent's employment income for the benefit months from [REDACTED]

The presented OI budget for [REDACTED] only factored Respondent's spouse's income. The income was verified. Presented evidence sufficiently established Respondent received an OI of [REDACTED].

It is found MDHHS established Respondent received [REDACTED] in over-issued FAP benefits for [REDACTED]. The analysis will proceed to determine if the over-issuance 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 presented Respondent's application for FAP benefits (Exhibit 1, pp. 11-28) dated [REDACTED]. 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 [REDACTED]. The notice approved Respondent for FAP benefits beginning [REDACTED]. 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 [REDACTED]. 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 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 for [REDACTED] 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]. The MDHHS request to

establish an IPV against Respondent and/or an OI of [REDACTED] in FAP benefits from [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]