



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]

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 beginning [REDACTED].
3. Respondent intentionally failed to report employment income to MDHHS.

4. Respondent's unreported employment income caused Respondent to receive an OI of [REDACTED] in FAP benefits from [REDACTED]
5. 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 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 [in income] must be reported within 10 days of receiving the first payment reflecting the change. *Id.*

MDHHS presented documents from "TheWorkNumber" (Exhibit 1, pp. 45-46) dated [REDACTED]. TheWorkNumber is a known internet site that MDHHS can utilize to sometimes obtain a client's employment information. Various weekly pays to Respondent from an employer were listed. Respondent's pay dates ranged from [REDACTED] to [REDACTED].

MDHHS presented a portion of Respondent's FAP benefit issuance history (Exhibit 1, p. 56). The history listed FAP issuances to Respondent for [REDACTED]/month from [REDACTED] to [REDACTED].

An Issuance Summary (Exhibit 1, p. 47) and OI budgets (Exhibit 1, pp. 48-55) for the benefit months from [REDACTED] were presented. The OI budgets factored Respondent's employment income from TheWorkNumber documentation and calculated Respondent received an OI of [REDACTED] in FAP benefits from [REDACTED] to [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 [REDACTED] per program. BAM 700, p. 9.

MDHHS alleged Respondent failed to timely report unemployment income to MDHHS. The allegation was supported by Respondent's statements on reporting documentation.

MDHHS presented Respondent's Redetermination (Exhibit 1, pp. 39-44). MDHHS received the Redetermination from Respondent on [REDACTED]. Respondent checked "no" in response to a question asking if he had employment income. Respondent's specialist electronically signed the Redetermination on [REDACTED], presumably following a telephone interview with Respondent. The presumption is based on MDHHS requirements for a telephone interview for FAP redeterminations (see BEM 210) and the specialist's writing of "telephone" next to his/her signature. Respondent's specialist wrote Respondent reported he was paid "under the table" and that Respondent would provide a statement of employment from his employer.

Respondent falsely wrote that he had no employment income; the statement is consistent with not previously reporting employment income. Though Respondent appeared to disclose employment during a telephone interview, he was not fully honest. It is improbable that Respondent was paid "under the table" if his employment income was reported to TheWorkNumber. Respondent's actions are indicative that any OI was caused by Respondent's own actions.

Presented evidence established Respondent received an OI of [REDACTED] in FAP benefits during the alleged OI period. 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 amounted to 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 a handwritten application requesting FAP benefits (Exhibit 1, pp. 10-31) and signed by Respondent on [REDACTED]. The application included language that Respondent's signature was certification that Respondent reviewed the application's Information Booklet, which informed Respondent of a requirement to report all changes.

MDHHS presented a Notice of Case Action (Exhibit 1, pp. 32-35) dated [REDACTED]. The notice approved Respondent for FAP benefits beginning [REDACTED]. The notice includes boilerplate language to report changes within 10 days.

MDHHS presented a blank Change Report (Exhibit 1, pp. 36-37) dated [REDACTED]. The document was mailed to Respondent and included language advising Respondent to report all changes within 10 days.

Presented evidence sufficiently established Respondent was aware of reporting requirements. Presented evidence was also not indicative that respondent was unable to understand reporting requirements.

Generally, MDHHS will have difficulty in establishing a purposeful failure to report information because there is typically no documentation to verify an IPV occurred. Respondent's failure to report employment income on the Redetermination is indicative of a fraudulent intent. Respondent's verbal amendment did not mitigate the intent as even that statement was untruthful.

Consideration was given to finding that Respondent did not intentionally fail to report employment income to MDHHS. It is theoretically possible that Respondent simply forgot to report his employment. Respondent's failure to accurately report information was strongly suggestive that Respondent's failure to report employment income was not accidental. It is found MDHHS clearly and convincingly established that Respondent committed an IPV.

The standard disqualification period is used in all instances except when a court orders a different period. BAM 725 (January 2016), p. 16. [MDHHS is to] apply the following disqualification periods to recipients determined to have committed an IPV... one year for the first IPV... two years for the second IPV[, and] lifetime for the third IPV. *Id.*

MDHHS testimony conceded an IPV had not previously been imposed against Respondent. Thus, MDHHS is justified in imposing a 12 month disqualification penalty against Respondent.

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 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

DHHS

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

[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]