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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: May 16, 2017
MAHS Docket No.: 16-015950
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 April 20, 2017 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) and Family Independence Program (FIP) benefits from the State of Michigan.

2. On an unspecified date from April 2015 through June 2015, Respondent began to receive employment income.
3. Respondent did not purposely fail to report the start of employment income.
4. Respondent's alleged failure to report employment income did not result in an OI of FAP or FIP benefits.
5. On September 22, 2016, MDHHS requested a hearing to establish Respondent committed an IPV and received an OI of \$[REDACTED] in FIP benefits and \$[REDACTED] in FAP benefits for the months from April 2015 through September 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).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. MDHHS (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131. 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 unsigned Intentional Program Violation Repayment Agreement (Exhibit 1, pp. 5-6) dated September 22, 2016. The document alleged Respondent received an overissuance of \$[REDACTED] in FIP benefits and \$[REDACTED] in FAP benefits. Both OIs were alleged to have occurred from April 2015 through September 2015. The document, along with MDHHS testimony, alleged the OIs were 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 (May 2012), p. 7. Changes [in income] must be reported within 10 days of receiving the first payment reflecting the change. *Id.*

MDHHS presented Respondent's FIP benefit issuance history (Exhibit 1, pp. 25-26) from April 2015 through September 2015. Issuances of \$[REDACTED] were listed twice for each benefit month for each benefit month.

MDHHS presented a portion of Respondent's FAP benefit issuance history (Exhibit 1, p. 27). Monthly issuances of \$[REDACTED] were listed from April 2015 through July 2015. Monthly issuances of \$[REDACTED] were listed for August 2015 through September 2015.

MDHHS presented an IG-011 (Exhibit 1, pp. 28-31). The MDHHS report is known to list quarterly annual gross earnings for clients based on the reporting of Michigan employers. The report listed no earnings for Respondent in the 1st quarter of 2015. The report listed Respondent's 2nd quarter earnings in 2015 from Employer as \$[REDACTED]. Respondent's 3rd-quarter earnings in 2015 from Employer was \$[REDACTED].

MDHHS presented an Issuance Summary (Exhibit 1, p. 45). The document listed a total OI of \$[REDACTED] in FAP benefits from April 2015 through July 2015, including how much Respondent was allegedly over-issued in benefits each month.

The OI calculation of FAP benefits was not supported by FAP budgets. Without FAP budgets, it cannot be determined if Respondent received any OI of FAP budgets.

Based on presented evidence, it is found that MDHHS failed to establish any OI of FAP benefits. The same problem did not infect MDHHS' evidence of an OI of FIP benefits.

MDHHS presented an Issuance Summary (Exhibit 1, p. 44) and corresponding FIP overissuance budgets (Exhibit 1, pp. 32-43) from April 2015 through June 2015. The budgets factored, in part, Respondent's FIP benefit issuances as stated on presented documents. The budgets also factored Respondent's earnings as \$[REDACTED] for each alleged OI month. A total OI of \$[REDACTED] was calculated.

Presumably, presented OI budgets calculated each month's income from Respondent's average monthly income as listed on the IG-001. The MDHHS calculations are flawed for multiple reasons.

Because Respondent first had earnings from Employer in the 2nd quarter of 2015, it can be inferred that Respondent likely began employment with Employer in either April 2015, May 2015, or June 2015. The month of starting income matters because if Respondent began receiving income in May 2015, then no OI can be established for April 2015. If Respondent began employment in June 2015, then no OI can be established for April 2015 or May 2015. The starting date of income is also relevant because of how the income start would have been processed had MDHHS originally factored Respondent's income from Employer.

[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 (October 2015), p. 7. If the reported

change will decrease the benefits or make the household ineligible, action must be taken and a notice issued to the client within 10 days of the reported change. *Id.*, p. 8.

There are two types of written notice: adequate and timely. BAM 220 (1/2014), p. 2. An adequate notice is a written notice sent to the client at the same time an action takes effect (not pending). *Id.* A timely notice is mailed at least 11 days before the intended negative action takes effect. The action is pending to provide the client a chance to react to the proposed action. *Id.*, p. 4.

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, FIP/SDA -15 workdays). BEM 505 (July 2015), p. 11. The effective month is the first full month that begins after the negative action effective date. *Id.*

The “10-10-12 Rule” is the unofficial name for the policies generally requiring at least 32 days between the date of a circumstance change and the first month that an OI can be established when based on the circumstance change. Presented evidence was unable to pinpoint Respondent’s income start date. Given presented evidence, the earliest possible date Respondent could have begun receiving income from Employer was April 1, 2017. Application of the 10-10-12 Rule would justify beginning an OI no earlier than June 2015. Thus, April 2015 and May 2015 cannot be found to be OI months.

It is possible that Respondent began to receive income from Employer as late as April 30, 2015. Such a starting income date is just as possible as a start date of April 1, 2015, given presented evidence. Applying the 10-10-12 Rule to a circumstance change date of April 30, 2015 (or later) results in beginning an OI no earlier than July 2015. MDHHS did not present any evidence of an OI from July 2015 or later.

It is found that MDHHS failed to establish an OI of FAP or FIP benefits. The analysis will proceed to determine if an IPV occurred.

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 portion of Respondent's FAP benefit application (Exhibit 1, pp. 10-17). Respondent's electronic signature was dated August 25, 2014. MDHHS presented the document to verify that Respondent was informed of a responsibility to report changes within 10 days. Boilerplate application language stated that the applicant's signature was certification that the applicant read and understood a section titled "Rights & Responsibilities"; reporting income within 10 days was a stated responsibility. MDHHS did not allege that the application reported any misinformation.

MDHHS presented a portion of Respondent's FIP benefit application (Exhibit 1, pp. 18-24). Respondent's electronic signature was dated November 3, 2014. MDHHS presented the document to verify that Respondent was informed of a responsibility to report changes within 10 days. Boilerplate application language stated that the applicant's signature was certification that the applicant read and understood a section titled "Rights & Responsibilities"; reporting income within 10 days was a stated responsibility. MDHHS did not allege that the application reported any misinformation.

MDHHS alleged Respondent failed to report the start of employment income resulting in an OI of benefits. It has already been found that Respondent did not receive an OI of benefits. Without establishment of an OI, MDHHS cannot establish that Respondent's actions prevented MDHHS from making a correct benefit determination.

It is found MDHHS failed to clearly and convincingly establish that Respondent committed an IPV. Accordingly, it is found MDHHS may not proceed with imposing an IPV disqualification against Respondent.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish that Respondent received OIs of \$[REDACTED] in FIP benefits and \$[REDACTED] in FAP benefits. It is further found that MDHHS failed to establish that Respondent committed an IPV related to either alleged benefit overissuance. The MDHHS request to establish an OI and 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]

Petitioner

[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]