



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: January 5, 2017
MAHS Docket No.: 16-013717
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 December 19, 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's FAP benefit group included a spouse.

3. On [REDACTED] Respondent's spouse began to receive employment income.
4. On [REDACTED], Respondent purposely failed to list her spouse's employment income on redetermination documents submitted to MDHHS.
5. From March 2015 through August 2015, Respondent received [REDACTED] in FAP benefits.
6. Factoring Respondent's spouse's unreported employment income caused Respondent to receive an OI of [REDACTED] in FAP benefits March 2015 through August 2015.
7. Respondent's failure to report employment income was intentional.
8. On [REDACTED], MDHHS requested a hearing to establish Respondent committed an IPV and received an OI of [REDACTED] in FAP benefits from March 2015 through August 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 unsigned Intentional Program Violation Repayment Agreement (Exhibit 1, pp. 6-7) dated [REDACTED]. The repay agreement alleged Respondent received an over-issuance of [REDACTED] in FAP benefits from March 2015 through August 2015. The repayment agreement, 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 must be reported within 10 days of receiving the first payment reflecting the change. *Id.*

MDHHS presented various documents from Respondent's husband's employer (Exhibit 1, pp. 47-49). Biweekly earnings for Respondent's husband were listed from [REDACTED].

MDHHS presented Respondent's FAP benefit issuance history from the State of Michigan (Exhibit 1, p. 50). The history listed FAP benefit issuances totaling [REDACTED] from March 2015 through August 2015.

An Issuance Summary (Exhibit 1, p. 51) and OI budgets (Exhibit 1, pp. 52-63) for the benefit months from March 2015 through August 2015 were presented. The OI budgets factored Respondent's spouse's employment income from Exhibit 1, pp. 47-49. The income was budgeted as "unreported" thereby depriving Respondent of a 20% employment income credit. Presented budgets calculated a FAP benefit OI of [REDACTED] from March 2015 through August 2015.

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 income budgeted from Employer 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. MDHHS also presented more compelling evidence of Respondent's failure to report.

MDHHS presented Respondent's Redetermination (Exhibit 1, pp. 41-46) dated [REDACTED]. Respondent listed herself, husband, and child as household members. In a section designed for clients to list income, Respondent listed her child's SSI. Respondent did not list her spouse's employment. The reporting document stated Respondent's signature was certification, under penalty of perjury, that all stated information was correct.

It is found Respondent failed to timely report employment income concerning her husband's employment. It is further found MDHHS established Respondent received a FAP benefit OI of [REDACTED] from March 2015 through August 2015. 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 presented Respondent's handwritten Assistance Application (Exhibit 1, pp. 11-34) dated [REDACTED]. The application stated that Respondent's signature was certification that Respondent reviewed and agreed with the application's Information Booklet; the Information Booklet informs clients of various MDHHS policies, including the requirement of reporting changes within 10 days.

Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015), p. 8. MDHHS verified Respondent failed to list her spouse's employment income on a reporting document when Respondent's spouse was employed. A written misreporting by a client is persuasive proof that the client committed an IPV. MDHHS established that Respondent was aware of her reporting requirements. Consideration was given to whether Respondent had the capacity to understand her reporting requirements.

On the Redetermination from February 2015, Respondent wrote, "I hope I filled paper work out right. The questions are confusing for me. Sorry if I have missed something, or a question." It is notable that Respondent managed to list her child's SSI income. No imaginable explanation can be conceived as to why Respondent understood to list one of her household's sources of income, but not understood to report employment income. There was no objective evidence that Respondent had any difficulty understanding she

was to list her spouse's income. MDHHS testimony provided further evidence supporting that Respondent was intentionally deceptive.

The testifying regulation agent testified Respondent's specialist interviewed Respondent concerning her Redetermination on [REDACTED]. The agent testified Respondent's specialist's case notes stated Respondent verbally reported her child's SSI was the only household income. Respondent's written statement of being confused comes across as a prepared excuse in case MDHHS discovered Respondent failed to list her spouse's income.

It is found Respondent had no impairment to understanding reporting requirements. It is further found MDHHS clearly and convincingly established Respondent committed an IPV by failing to report her spouse's employment income.


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 did not present evidence of Respondent's IPV history. Due to the absence of evidence presented by MDHHS, whether respondent previously committed an IPV will be considered in the most favorable light for Respondent. The most favorable light assumes Respondent had no previous IPV's. Thus, a 1 year disqualification period is justified.

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 March 2015 through August 2015. 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

Petitioner

[REDACTED]

DHHS

[REDACTED]

[REDACTED]

Respondent

[REDACTED]