



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: March 17, 2017
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. In [REDACTED] Respondent received employment income from an employer (hereinafter "Employer").
2. Respondent's employment income from Employer continued through [REDACTED]
[REDACTED]

3. On [REDACTED] Respondent applied for FAP benefits.
4. Respondent's application failed to report employment income.
5. Respondent's failure to report income was purposeful.
6. From [REDACTED], Respondent received an OI of [REDACTED] in FAP benefits.
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].
8. As of the date of administrative hearing, Respondent had no known previous history of IPV's.

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 document 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.

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. [Income] changes must be reported within 10 days of receiving the first payment reflecting the change. *Id.*

MDHHS presented a Verification of Employment (Exhibit 1, pp. 29-30) and corresponding earnings statement (Exhibit 1, p. 31) from Employer. Respondent's first pay date was [REDACTED]. Respondent's final pay was stated to be issued on [REDACTED]. Respondent was stated to be paid twice per month. Gross earnings issued to Respondent totaled [REDACTED].

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, p. 32). FAP issuances from [REDACTED] through [REDACTED].

An Issuance Summary (Exhibit 1, p. 33) and OI budgets (Exhibit 1, pp. 34-41) for the benefit months from [REDACTED] through [REDACTED] were presented. Respondent's employment income was factored. MDHHS testimony indicated Respondent's total gross earnings was divided by 12 pay periods to determine Respondent's average earnings per pay period. All budgeted employment income was factored as unreported income, thereby depriving Respondent of a 20% employment income credit for reporting employment income. Presented budgets calculated a FAP benefit OI of [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.

The above policy allows MDHHS to pursue an OI no matter which party was at fault. The OI budgets, as presented, can only be found accurate if it is found Respondent is at fault for the OI.

MDHHS alleged Respondent failed to timely report unemployment income to MDHHS. The allegation was based, in part, on the absence of income budgeted as part of Respondent's original FAP benefit issuances during the alleged OI period. The allegation was also based, in part, on the absence of reporting documented in Respondent's case file. A regulation agent testified that a search of Respondent's case file revealed no indication of Respondent timely reporting income. 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 employment income. Thus, MDHHS properly denied Respondent a 20% employment income credit for reporting income.

It is further found MDHHS established Respondent received a FAP benefit OI of [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 presented Respondent's FAP benefit application (Exhibit 1, pp. 11-28). Respondent's electronic signature was dated [REDACTED]. Boilerplate language advised clients that a signature was certification of an understanding of a responsibility to report changes to MDHHS within 10 days. The application reported \$0 employment income (See Exhibit 1, p. 20).

MDHHS testimony indicated that Respondent's specialist's notes indicated Respondent was interviewed on [REDACTED], concerning her FAP benefit application. MDHHS testimony indicated Respondent's specialist noted Respondent reported an inability to work because of a lack of transportation.

Respondent's application and interview statements reporting a lack of employment income were verified to be false. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015), p. 8.

Presented evidence verified Respondent misreported employment income when applying for FAP benefits. Presumably, Respondent's intent was to deceive for the purpose of receiving benefits for which she was not entitled.

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]