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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

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Date Mailed: May 4, 2017
MAHS Docket No.: 16-015980
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

**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 ██████████, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by ██████████, Regulation Agent, with the Office of Inspector General. Respondent did not appear.

ISSUES

1. The first issue is whether MDHHS established Respondent received an overissuance (OI) of benefits.
2. 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. On an unspecified date in the second quarter of ██████ Respondent began receiving employment income from an employer (hereinafter "Employer").

3. Respondent's employment income from Employer continued through an unspecified date in the third quarter of [REDACTED]
4. Respondent failed to report employment income from Employer to MDHHS.
5. Respondent's failure to report income was not clearly and convincingly purposeful.
6. Respondent received an OI of \$ [REDACTED] in FAP benefits from [REDACTED] through [REDACTED] as a result of unreported employment income.
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 unsigned Intentional Program Violation Repayment Agreement (Exhibit 1, pp. 5-6) dated [REDACTED]. The document alleged Respondent received an OI of \$ [REDACTED] in FAP benefits from [REDACTED] [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- Details (Exhibit 1, pp. 29-30). The document listed a "run date" of [REDACTED]; MDHHS testimony implied this was the date when Respondent's employment income was first known to them. The report stated that Respondent received \$ [REDACTED] from Employer during the second quarter of [REDACTED]. The listed income was consistent with an Other Income- Search document (Exhibit 1, p. 31).

MDHHS presented a Wage Match- Details (Exhibit 1, pp. 27-28). The document listed a "run date" of [REDACTED]. The report stated that Respondent received \$ [REDACTED] from Employer during the third quarter of [REDACTED]. The listed income was consistent with an Other Income- Search document (Exhibit 1, p. 31).

MDHHS presented Respondent's FAP Benefit Issuance History (Exhibit 1, p. 46) from [REDACTED]. Monthly issuances of \$ [REDACTED] were listed for each benefit month.

MDHHS presented an Issuance Summary (Exhibit 1, p. 33) and corresponding FAP OI budgets (Exhibit 1, pp. 34-45) covering [REDACTED]. The budgets factored, in part, Respondent's FAP benefit issuances as stated on presented documents. The budgets also factored 1/3rd of Respondent's quarterly earnings as stated on presented documents. A total OI of \$ [REDACTED] was calculated.

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-cited policy allows MDHHS to pursue an OI no matter which party was at fault (assuming an OI over \$ [REDACTED] is established). The OI budgets, as presented, can only be found accurate if it is found Respondent is at fault for the OI.

The budgets factored Respondent's income with Employer as unreported. Factoring employment income as unreported deprives clients from receipt of a 20% employment income credit (see BEM 556). The analysis will proceed to determine if Respondent reported income from Employer.

MDHHS implicitly alleged Respondent failed to timely report employment income to MDHHS, in part, based on the absence of income budgeted from Employer as part of Respondent's original FAP benefit issuances during the alleged OI period. Respondent did not appear to rebut the allegation.

It is found that Respondent failed to report employment income. Thus, MDHHS properly deprived Respondent of the 20% employment income credit.

Consideration was given to rejecting one or more of the OI budgets because MDHHS did not verify the start date of Respondent's employment income. MDHHS policy does not require verification of a start date when calculating an OI.

[For wage matches,] if the household fails to provide verification of the earnings, the recoupment specialist is to use the income shown on the wage match report to calculate the overissuance. BAM 802 (January 2016), p. 3. [MDHHS is to] average the income over the time period reported on the task and reminder to determine a monthly income amount. *Id.* Use the first and last month of the time period as the overissuance begin and end dates. *Id.*

The above-cited policy allows MDHHS to calculate an OI based on Respondent's average monthly earnings. Presented evidence sufficiently verified MDHHS properly calculated that Respondent's lack of reporting caused an OI of \$ [REDACTED] during the alleged OI period. 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 Respondent's application for FAP benefits (Exhibit 1, pp. 10-20). Respondent's electronic signature was dated [REDACTED]. MDHHS did not allege that the application reported misinformation. Boilerplate application language stated that Respondent'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 presented a Notice of Case Action (Exhibit 1, pp. 21-24) dated [REDACTED]. The notice included boilerplate language reminding Respondent to report to MDHHS changes within 10 days of their occurrence (see Exhibit 1, p. 24).

MDHHS presented a Change Report (Exhibit 1, pp. 25-26) dated [REDACTED]. The reporting document again reminded Respondent to report changes within 10 days.

MDHHS alleged Respondent failed to report employment income to MDHHS; this was established. By alleging an IPV, MDHHS essentially contended that Respondent's failure was purposeful.

Respondent's failure to report employment income to MDHHS could reasonably be explained by Respondent forgetting to report. Though presented documents verified clients are advised to report changes within 10 days, it does not ensure that a client would not accidentally forget.

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.

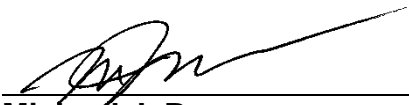
It is found MDHHS failed to clearly and convincingly establish that Respondent committed an IPV. Accordingly, it is found MDHHS may not proceed with imposing an IPV disqualification against Respondent.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent received \$ [REDACTED] in over-issued FAP benefits from [REDACTED]. The MDHHS request to establish an OI 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 committed an IPV related to an OI of FAP benefits due to unreported income for the months from [REDACTED] [REDACTED]. The MDHHS request to establish Respondent committed an IPV is **DENIED**.

CG for MJB/jaf



Michael J. Bennane
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]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

DHHS

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