



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: June 9, 2017
MAHS Docket No.: 16-017307
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 May 11, 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 appeared and was unrepresented.

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. From [REDACTED], through [REDACTED], Respondent received employment income from an employer (hereinafter "Employer").

3. Respondent timely reported to MDHHS employment income from Employer.
4. MDHHS calculated Respondent received an OI of \$ [REDACTED] from March 2014 through October 2014, in part, based on Respondent's alleged failure to timely report employment income.
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 March 2014 through October 2014.

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 over-issuance of [REDACTED] in FAP benefits from March 2014 through October 2014. 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 (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 Assistance Application (Exhibit 1, pp. 10-29) requesting FAP benefits. Respondent's handwritten signature was dated [REDACTED]. 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 Respondent's Filing Form (Exhibit 1, pp. 30-31). The form was signed by Respondent on [REDACTED]. MDHHS initially alleged the form contained misinformation. During the hearing, MDHHS conceded the form did not contain misinformation.

MDHHS presented an Eligibility Summary listing a portion of Respondent's FAP benefit issuance history (Exhibit 1, p. 32). A monthly issuance for March 2014 of \$ [REDACTED] was listed. Monthly issuances from July 2014 through October 2014 were listed as follows: \$ [REDACTED], \$ [REDACTED], \$ [REDACTED], and \$ [REDACTED].

MDHHS presented Respondent's earning statements (Exhibit 1, pp. 33-36) from Employer. Various pays from [REDACTED], through August 27, 2014, were listed.

MDHHS presented an Issuance Summary (Exhibit 1, p. 36) and corresponding FAP overissuance budgets (Exhibit 1, pp. 37-48) from March 2014 through October 2014. The budgets factored, in part, Respondent's FAP benefit issuances as stated on presented documents. The budgets also factored Respondent's earnings as stated on presented documentation. 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 \$250 per program. BAM 700, p. 9.

The above policy allows MDHHS to pursue an OI no matter which party was at fault (assuming an OI of \$250 or more is established). The OI budgets, as presented, can only be found accurate if it is found Respondent is at fault for the OI.

Presented budgets factored all of 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 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 responded that she timely reported employment income to MDHHS. Respondent presented supporting evidence of her claim.

Respondent presented earning statements from Employer (Exhibit A, pp. 1-2). The statements ranged in date from [REDACTED] through [REDACTED]. The document had a date stamp of [REDACTED]. The date stamp read "[REDACTED] DHS RECEPTION" and resembled date stamps that MDHHS offices are known to use.

Respondent's presented documentation was highly persuasive evidence that she submitted income information to MDHHS on [REDACTED]. It is found that Respondent's employment income was reported to MDHHS no later than [REDACTED]. Thus, it is found that MDHHS failed to establish an OI because presented OI calculations failed to factor that Respondent timely reported employment income.

Consideration was given to finding an OI for March 2014 based on a possibly untimely reporting (more than 10 days after the start of employment income) by Respondent. This consideration was rejected.

Testimony was not taken as to when Respondent reported her employment to MDHHS because it is unrealistic for any persons to remember dates of reporting after the passage of 3 years. Given Respondent's submission of employment income on [REDACTED], it is probable that she reported the start of the employment to MDHHS at some point in the 10 days following her first check on [REDACTED].

It is found Respondent timely reported to MDHHS the start of employment income from Employer. Thus, MDHHS should not have factored any of Respondent's employment income to be unreported. Thus, MDHHS is also denied an OI for March 2014

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 alleged Respondent committed an IPV by purposely failing to report employment income. Respondent obliterated the allegation by establishing the exact opposite of what MDHHS alleged.

For good measure, it has already been found that MDHHS failed to establish an OI of FAP benefits. Without establishment of an OI, MDHHS cannot establish an IPV. It is found that MDHHS failed to establish that Respondent committed an IPV.

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 an OI of \$ [REDACTED] in FAP benefits from March 2014 through October 2014. It is further found that MDHHS failed to establish that Respondent committed an IPV related to the alleged OI. The MDHHS request to establish an overissuance and IPV disqualification against Respondent 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]