



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR



Date Mailed: June 7, 2017
MAHS Docket No.: 17-002923
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 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. From [REDACTED] through [REDACTED] Respondent received employment income from an employer (hereinafter "Employer#1").

3. From [REDACTED], through March 4, 2016, Respondent received employment income from an employer (hereinafter "Employer#2").
4. From [REDACTED], through [REDACTED], Respondent received employment income from Employer#1.
5. Respondent failed to timely report employment income from Employer#1 and Employer#2 to MDHHS.
6. Respondent's failure to timely report income was clearly and convincingly purposeful.
7. Respondent received an OI of \$ [REDACTED] in FAP benefits from December 2015 through October 2016 as a result of unreported employment income.
8. 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 December 2015 through October 2016.

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 December 2015 through October 2016. 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 a Notice of Case Action (Exhibit 1, pp. 35-38) dated [REDACTED]. The notice approved Respondent for FAP benefits beginning [REDACTED]. A budget summary (see Exhibit 1, pp. 36) indicated no income was factored in the benefit determination.

Comments concerning Respondent's case (Exhibit 1, p. 41) were presented. Comments dated [REDACTED], indicated Respondent was interviewed and that he reported stopped employment from January 2016. Comments dated [REDACTED], indicated Respondent reported he will receive his first pay from a staffing agency on [REDACTED], [REDACTED].

MDHHS presented documentation from TheWorkNumber.com (Exhibit 1, pp. 42-44) Various gross pays from Employer#1 to Respondent were listed. Pay dates ranged from [REDACTED], through [REDACTED]. A subsequent series of pays ranged from [REDACTED] through [REDACTED].

An MDHHS inquiry to Employer #2 concerning Respondent's pay information (Exhibit 1, p. 45) was presented. A response from Employer#2 included Respondent's pay history. The response from Employer #2 was signed on [REDACTED]. Listed earnings for Respondent ranged from [REDACTED], through [REDACTED].

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, pp. 68-69). Monthly issuances of \$ [REDACTED] were listed from December 2015 through September 2016 (other than April 2016 which had an issuance of \$ [REDACTED]).

MDHHS presented an Issuance Summary (Exhibit 1, p. 48) and corresponding FAP overissuance budgets (Exhibit 1, pp. 49-56) from December 2015 through March 2016. 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 documents from Employer#1 and Employer#2. A total OI of \$ [REDACTED] was calculated.

MDHHS presented an Issuance Summary (Exhibit 1, p. 57) and corresponding FAP overissuance budgets (Exhibit 1, pp. 58-67) from April 2016 through September 2016. 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 documents from Employer #2. 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 of 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. The allegation was also based on an absence of documentation of employment income within Respondent's casefile. Most notably, Respondent failed to report income on a reporting document at a time when Respondent was receiving employment income.

MDHHS presented Respondent's FAP-benefit application (Exhibit 1, pp. 24-34). Respondent's electronic signature was dated [REDACTED]. The application reported no income for the household.

Respondent's application reported no income despite Respondent recently restarting employment income from Employer#1. Respondent's written misreporting was highly indicative that Respondent did not timely report to MDHHS other employment income.

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

Presented evidence sufficiently verified Respondent's lack of reporting caused an OI of benefits during the alleged OI period. Presented evidence established that MDHHS correctly calculated the OI to be \$ [REDACTED]. 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 alleged Respondent failed to report to MDHHS the start of employment income; this was established. By alleging an IPV, MDHHS essentially contended that Respondent's failure was purposeful and intentional.

MDHHS presented Respondent's FAP-benefit Redetermination (Exhibit 1, pp. 12-17). Respondent's signature was dated [REDACTED]. MDHHS presented the document to verify that Respondent was informed of a responsibility to report changes within 10 days. The form did not appear to inform Respondent of such a requirement.

MDHHS presented a Notice of Case Action (Exhibit 1, pp. 18-21) dated [REDACTED], [REDACTED] Boilerplate language stated Respondent was to report changes to MDHHS within 10 days.

MDHHS presented a Change Report (Exhibit 1, pp. 22-23) dated [REDACTED]. Boilerplate language stated Respondent was to report changes to MDHHS within 10 days.

In the OI analysis, it was found that Respondent misreported income on a reporting document. MDHHS has policy to address misreporting.

Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015), p. 8. Respondent's written statements were indicative of a lack of truthfulness.

MDHHS established that Respondent was aware of reporting requirements. There was no indication Respondent failed to understand reporting requirements.

Generally, a written misreporting by a client is persuasive proof that the client committed an IPV. Presented evidence does not suggest deviation from the general rule. It is found MDHHS clearly and convincingly established Respondent committed an IPV by failing to report 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 allege a previous history of IPV by Respondent. Based on presented evidence, a 12-month disqualification 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 an overissuance of \$ [REDACTED] in FAP benefits from December 2015 through October 2016 due to an IPV. The MDHHS request to establish an overissuance and a 12-month disqualification 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]

Respondent

[REDACTED]