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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

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: July 28, 2017

MAHS Docket No.: [REDACTED]

Agency No.: [REDACTED]

Petitioner: [REDACTED]

Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION AND
ESTABLISHMENT OF 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. 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.

An administrative hearing was originally held on [REDACTED]. An administrative hearing decision was issued on [REDACTED]. The decision dated [REDACTED], in part, dismissed (without prejudice) Petitioner's request to establish an overissuance. MDHHS subsequently appealed and requested a rehearing to dispute the dismissal of the overissuance. On [REDACTED], the Michigan Administrative Hearing System approved Petitioner's request for rehearing.

ISSUE

The 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 may or may not have received an OI of FAP benefits due to an alleged failure to report employment income from her employer (hereinafter "Employer").
3. Respondent's alleged failure to report income to MDHHS was not clearly and convincingly purposeful.
4. On [REDACTED], MDHHS requested a hearing to establish that Respondent committed an IPV related to an OI of [REDACTED] in FAP benefits for the months from [REDACTED].
5. MDHHS verbally withdrew the request to establish an OI.

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)

The present case involves a rehearing requested by MDHHS. The request for rehearing merits review.

The original MDHHS hearing request sought, in part, to establish an OI against Respondent. The subsequent hearing decision dismissed MDHHS's request to establish an OI against Respondent.

In their request for rehearing, MDHHS contended that establishment of an OI was never requested and that the hearing decision improperly dismissed the OI. It is not known how or why MDHHS could be justified in disputing the dismissal of an OI which they claim was never requested. Nevertheless, MAHS approved MDHHS' rehearing request, in part, by concluding that the original hearing decision failed to adequately consider the merits of the alleged OI... the same OI that MDHHS claimed was never requested.

The MDHHS hearing request (Exhibit 1, p. 1) for the present hearing was the same as it was in the first hearing. The MDHHS hearing request still alleged an OI. MDHHS testimony indicated that only establishment of an IPV would be sought for the rehearing.

Based on MDHHS' verbal withdrawal of the OI establishment, the request to establish an OI will be dismissed... just as it was in the original hearing decision. The analysis will proceed to consider the alleged IPV against Respondent. Before an analysis of the merits of MDHHS' allegation, one procedural matter requires addressing.

[For IPV hearings involving FAP benefits,] if the notice [of hearing] is sent using first class mail and is returned as undeliverable, the hearing may still be held. 7 CFR 273.16 (e)(3)(i). MDHHS policy functionally mirrors federal regulations.

OIG requests IPV hearings when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located. BAM 720 (January 2016), p. 12. One exception to this policy exists. For FAP only, OIG will pursue an IPV hearing when correspondence was sent using first class mail and is returned as undeliverable. *Id.*

An implied requirement of holding an IPV hearing when a hearing notice is returned is that the mailing occurred in good faith and was based on reasonable efforts. MDHHS presented evidence supporting both requirements during the original hearing.

It is found that MDHHS used good faith and reasonable efforts to notify Respondent of the IPV hearing. Thus, an analysis of the merits of MDHHS' allegations may proceed.

MDHHS requested a hearing, in part, to establish that Respondent committed an IPV. 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 document, along with MDHHS testimony, alleged that Respondent committed an IPV by purposely failing to timely report employment income.

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).

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 2015), p. 11. Changes [in income] must be reported within 10 days of receiving the first payment reflecting the change. *Id.*

MDHHS presented a Verification of Employment (Exhibit 1, pp. 14-15). The document was signed by an executive assistant from Employer on [REDACTED]. The document stated Respondent began employment with Employer on [REDACTED]. The document stated Respondent received ongoing pays from Employer beginning [REDACTED].

MDHHS presented Respondent's earnings history with Employer. (Exhibit 1, p. 16). Presumably, the document was sent to MDHHS by Employer, along with the Verification of Employment. Various biweekly gross pays from pay periods ending [REDACTED], were listed.

MDHHS presented a portion of Respondent's FAP benefit issuance history (Exhibit 1, p. 17). Monthly issuances of [REDACTED] were listed for each month from the alleged OI period.

MDHHS presented an Issuance Summary (Exhibit 1, p. 26) and corresponding FAP overissuance budgets (Exhibit 1, pp. 18-25) covering from [REDACTED]. The budgets factored, in part, Respondent's FAP benefit issuances as stated on presented documents. The budgets appeared to accurately factor Respondent's earnings as stated on the presented earning statement. 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 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.

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 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 case file. A regulation agent testified a search of Respondent's case file revealed no indication of Respondent timely reporting employment income with Employer. 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 that Respondent failed to report employment income. Thus, MDHHS properly deprived Respondent of the 20% employment income credit. The analysis will proceed to determine if Respondent's non-reporting amounted to an IPV.

MDHHS presented Respondent's application requesting FAP benefits (Exhibit 1, pp. 27-54). Respondent's signature was dated [REDACTED]. The application stated Respondent's signature was certification that the "Rights & Responsibilities" section was read and understood. The Rights & Responsibilities section includes boilerplate language informing clients of the requirement to report changes within 10 days of starting income.

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 and intentional.

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

MDHHS did not present verification of a written misreporting by Respondent. Generally, MDHHS will have difficulty in establishing a clear and convincing purposeful failure to report information when there is not verification of misreporting. 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 failed to establish that Respondent committed an IPV related to an OI of FAP benefits due to unreported income for the months from [REDACTED] through [REDACTED]. The MDHHS request to establish Respondent committed an IPV is **DENIED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS withdrew the request to establish an OI against Respondent. The request to establish an OI against Respondent is **DISMISSED**.

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]