



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: July 20, 2017

MAHS Docket [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. Respondent was an ongoing recipient of Food Assistance Program (FAP) benefits from the State of Michigan.
2. On an unspecified date from [REDACTED] Respondent began receiving employment income from an employer (hereinafter "Employer#1")

3. On an unspecified date from [REDACTED], Respondent began receiving employment income from a different employer (hereinafter "Employer#2")
4. Respondent did not report employment income from Employer#1 to MDHHS until [REDACTED]
5. Respondent did not timely report employment income to MDHHS concerning Employer #2.
6. Respondent's failure to timely report employment income caused an OI of FAP benefits of [REDACTED] from [REDACTED] and [REDACTED]
7. Respondent's failure to timely report income was not clearly and convincingly purposeful.
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 [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 over-issuance of [REDACTED] in FAP benefits from [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 (May 2012), p. 7. Changes [in income] must be reported within 10 days of receiving the first payment reflecting the change. *Id.*

MDHHS presented an Employee Wage History by Recipient ID (Exhibit 1, p. 19) (hereinafter "IG-001"). The report is known to list earnings reported to the Department of Treasury by employers in Michigan. The document listed the following earnings for Respondent from Employer #1: ██████████ in the 2nd quarter of ██████████ in the ██████████ in the 4th quarter of ██████████ in the 1st quarter of ██████████, and ██████████ in the 2nd quarter of ██████████. The document listed ██████████ in earnings for Respondent from Employer #2 in the 2nd quarter of ██████████.

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, p. 52) from ██████████. Monthly issuances totaling ██████████ were listed.

MDHHS presented an Issuance Summary (Exhibit 1, p. 46) and corresponding FAP overissuance budgets (Exhibit 1, pp. 22-45) from ██████████ through ██████████. The budgets factored, in part, Respondent's FAP benefit issuances as stated on presented documents. The budgets factored monthly averages of Respondent's employment income as stated on the IG-001. Employment income from Employer #1 was factored from ██████████. Employment income from Employer#2 was factored in budgets from ██████████ through ██████████. A total OI of ██████████ was calculated. A total OI of ██████████ was calculated from ██████████.

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 ██████████ 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 ██████████ 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. The allegation was also based on an absence of documentation of employment income within Respondent's case file. Presented evidence suggested Respondent reported employment earlier than alleged by MDHHS.

MDHHS presented Respondent's Redetermination (Exhibit 1, pp. 11-16). Respondent's handwritten signature was dated October 17, 2014. Respondent listed employment

income from an employer. The employer listed by Respondent happened to not match the name of Employer#1.

During the hearing, MDHHS was asked how the income listed on the Redetermination was not accepted as a reporting of Respondent's employment income from Employer#1. MDHHS testimony implied the income listed by Respondent on the Redetermination was not employment income from Employer #1 because the reported employer name was different from Employer#1.

Persons may refer to their employer by the name of the office or store at which they work; on tax records, the employer's name may be completely different from the name known to the employee. The prevalence of such a circumstance is not known, however, it would seem to be a very common circumstance.

A finding that Respondent's reported employer matched the same employer on tax records is also consistent with presented tax records. Respondent reported to MDHHS having one employer in [REDACTED]. The presented Employee Wage History by Recipient ID listed one employer for Respondent during the third quarter [REDACTED]

It is possible that some unknown circumstance caused MDHHS to not budget the employment income reported on a Redetermination in Respondent's subsequent FAP eligibility. One possible circumstance would be if Respondent falsely reported a stoppage in employment income shortly after he submitted the Redetermination to MDHHS. No evidence of such a circumstance existed.

Based on presented evidence, it is found that Respondent reported employment income from Employer#1 to MDHHS on [REDACTED]. Two conclusions can be deduced from this finding.

First, MDHHS could have avoided an OI by processing Respondent's reported employment income. Secondly, all presented OI budgets after [REDACTED] which include unreported employment income from Employer #1 are improper for counting reported income as unreported.

It is found that MDHHS failed to establish an OI of [REDACTED] in FAP benefits from [REDACTED] [REDACTED]. The analysis will proceed to consider whether Respondent timely reported employment income from Employer #1 before [REDACTED] and whether Respondent timely reported employment income from Employer #2.

A regulation agent credibly 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 concerning benefit months from [REDACTED] and [REDACTED].

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 consider whether the OI was caused by 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 timely report employment income; 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 established that Respondent received [REDACTED] in over-issued FAP benefits from [REDACTED] and [REDACTED]. The MDHHS request to establish an overissuance is **PARTIALLY APPROVED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish that Respondent received [REDACTED] in over-issued FAP benefits from [REDACTED]. The MDHHS request to establish an overissuance is **PARTIALLY DENIED**.

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/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]
[REDACTED]
[REDACTED])

Petitioner

[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]