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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 3, 2017
MAHS Docket No.: [REDACTED] 17-005060
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 as the only member of a FAP-benefit group.
2. Respondent was an ongoing simplified reporter.
3. From [REDACTED], it is unknown if Respondent received an OI of FAP benefits related to failing to report an increase in employment income.

4. 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. 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 the OI was based on Respondent's failure to timely report an increase in 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.*

Food assistance groups with countable earnings... are assigned to the simplified reporting (SR) category. BAM 200 (December 2013), p. 1. This reporting option increases Food Assistance Program (FAP) participation by employed households and provides workload relief. *Id.*

MDHHS presented a Notice of Case Action (Exhibit 1, pp. 24-29) dated May 16, 2014. The notice informed Respondent of an approval of FAP benefits. The notice included boilerplate language advising Respondent to report any changes affecting benefit eligibility within 10 days of the change. The notice also informed Respondent of a need to report changes in employment income resulting in an excess of [REDACTED]/month in income.

MDHHS presented a Simplified Six-Month Review (Exhibit 1, p. 30) dated [REDACTED]. The notice included language advising Respondent to report changes in income

exceeding [REDACTED] on a Semi-Annual Contact Report. The document also advised Respondent that completion of a Semi-Annual Contact Report was required every 6 months.

MDHHS presented a Semi-Annual Contact Report (Exhibit 1, pp. 31-32). Respondent's signature was dated [REDACTED]. Respondent checked "no" in response to a question asking if Respondent's income had changed by more than [REDACTED] from [REDACTED].

MDHHS presented documentation from TheWorkNumber.com (Exhibit 1, pp. 35-39). Various weekly pay dates from Employer to Respondent were listed. Respondent's gross pays totaled [REDACTED] for [REDACTED] [REDACTED] for [REDACTED].

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, pp. 61-62). Issuances from [REDACTED].

MDHHS alleged Respondent exceeded simplified reporting limits in [REDACTED]. The MDHHS allegation was consistent with presented employment records.

MDHHS presented an Issuance Summary (Exhibit 1, p. 40) and corresponding FAP overissuance budgets (Exhibit 1, pp. 41-60) covering [REDACTED]. The budgets factored, in part, Respondent's FAP benefit issuances as stated on presented documents. The budgets factored Respondent's earnings as stated on presented documents. A total OI of [REDACTED] was calculated. Presented OI budgets were flawed.

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).

MDHHS did not allege that Respondent failed to report employment income. MDHHS only alleged that Respondent failed to report employment income that exceeded simplified reporting limits. MDHHS should have factored a portion of Respondent's actual income as reported. MDHHS failed to do so. Thus, presented OI budgets are flawed for failing to issue a 20% credit for the portion of employment income timely reported by Respondent.

It is found that MDHHS failed to establish an OI. The analysis will proceed to consider whether Respondent committed 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).

MDHHS regulations list the requirements for an IPV. 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 (1/2011), 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 FAP benefit application (Exhibit 1, pp. 11-23). Respondent's electronic 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 Redetermination (Exhibit 1, pp. 12-17). Respondent's signature was dated [REDACTED]. It was noted that Respondent reported beginning employment with Employer on [REDACTED]. MDHHS did not allege that the document reported misinformation.

MDHHS alleged Respondent purposely failed to report an increase in income resulting in Respondent's receipt of FAP benefits to which Respondent was not entitled. It is possible that Respondent purposely failed to report an increase in income. Such a conclusion cannot be found unless an OI is established. As MDHHS failed to establish that Respondent received an OI of FAP benefits, it must follow that MDHHS failed to 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 received an OI of [REDACTED] in FAP benefits from [REDACTED]. It is further found that Respondent did not commit an IPV related to the alleged OI. The MDHHS requests to establish that Respondent received an OI of FAP benefits and committed an IPV are **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]
[REDACTED]
[REDACTED]