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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] 17-005980
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. Beginning [REDACTED] Respondent began to receive [REDACTED] in monthly RSDI.
3. Respondent failed to timely report RSDI benefits to MDHHS.

4. Respondent's failure to timely report income was clearly and convincingly purposeful.
5. Respondent received an OI of [REDACTED] in FAP benefits from [REDACTED] through [REDACTED] as a result of unreported RSDI benefits.
6. 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] [REDACTED]. The document, along with MDHHS testimony, alleged the OI was based on unbudgeted RSDI benefits.

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.

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. This policy allows MDHHS to pursue an OI no matter which party was at fault (assuming an OI of [REDACTED] or more is established).

MDHHS presented Respondent's SOLQ (Exhibit 1, pp. 59-61). The document listed [REDACTED] in "Benefits paid" on [REDACTED], was also the "Date of Current Entitlement" and "Date of Initial Entitlement".

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, pp. 94-95). Monthly issuances of [REDACTED] were listed from [REDACTED].

MDHHS presented an Issuance Summary (Exhibit 1, p. 83) and corresponding FAP overissuance budgets (Exhibit 1, pp. 63-82) from [REDACTED]. The budgets factored, in part, Respondent's FAP benefit issuances as stated on presented documents. The budgets also factored unearned income of [REDACTED]. A total OI of [REDACTED] was calculated.

Presented evidence sufficiently verified Respondent received an OI of benefits during the alleged OI period due to unbudgeted RSDI. Presented evidence established that MDHHS properly calculated the OI to be [REDACTED]. The analysis will proceed to determine if the OI was caused by an IPV by Respondent.

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).

It was already established that Respondent received an OI of FAP benefits due to unbudgeted RSDI benefits. MDHHS further alleged that Respondent purposely failed to report RSDI benefits.

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 FAP benefit application (Exhibit 1, pp. 11-36). Respondent's electronic signature was dated [REDACTED]. 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 a Notice of Case Action (Exhibit 1, pp. 85-90) dated [REDACTED]. Boilerplate language informed Respondent of the requirement to report changes within 10 days. A budget summary indicated Respondent's FAP eligibility factored [REDACTED] in unearned income and [REDACTED] employment income.

Generally, MDHHS will have difficulty in establishing a clear and convincing purposeful failure to report information without a client's written misreporting. MDHHS debatably established a written misreporting by Respondent.

MDHHS presented Respondent's Redetermination (Exhibit 1, pp. 37-42). Respondent's signature was dated [REDACTED]. MDHHS credibly testified that this document was the written reporting closest to and before Respondent's Mid-Certification Contact Notice. Respondent listed no household income; MDHHS did not allege this document misreported information.

MDHHS presented Respondent's Mid-Certification Contact Notice (Exhibit 1, pp. 43-44). The document appeared to have been submitted by Respondent to MDHHS on [REDACTED]. Respondent wrote, "Same," in response to instructions to list any changes in income.

Reporting the "Same" income can only be a purposeful misreporting if Respondent was fully aware that he had not previously reported RSDI to MDHHS. It was established that Respondent's previous written reporting did not report income. Evidence was supportive that Respondent likely was aware that he misreported information by claiming the "same" income.

Generally, clients are aware that receipt of [REDACTED]/month in RSDI will decrease FAP benefits. Respondent likely knew, based on receipt of the same amount of FAP benefits from a time when he had no income, that MDHHS was not aware of the start of RSDI. This consideration is indicative that Respondent was aware that reporting no change in income equated to reporting no income.

MDHHS alleged Respondent's income from RSDI was only discovered after Respondent's specialist checked Respondent's SOLQ as part of Respondent's mid-certification redetermination. MDHHS testified a check of Respondent's case file failed

to uncover a previous reporting by Respondent. The evidence was not rebutted and is consistent with Respondent not reporting the start of RSDI.

Presented evidence sufficiently verified that Respondent misreported to MDHHS by reporting the "same" income to MDHHS in [REDACTED]. Technically, Respondent's written misreporting did not cause an OI of FAP benefits. The written misreporting is highly indicative that Respondent purposely did not otherwise report the start of RSDI. A purposeful non-reporting is an IPV. It is found that MDHHS established that Respondent committed an IPV.

The standard disqualification period is used in all instances except when a court orders a different period. BAM 725 ([REDACTED]), 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's 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 [REDACTED] through [REDACTED] 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

DHHS

[REDACTED]

Petitioner

[REDACTED])

Respondent

[REDACTED]