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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: September 13, 2017
MAHS Docket No.: 17-004970
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 September 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

1. The first issue is whether MDHHS established Respondent received an overissuance (OI) of benefits.
2. 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], Respondent received employment income from an employer (hereinafter "Employer #1").
3. From [REDACTED], Respondent received employment income from a different employer (hereinafter "Employer #2").

4. Respondent failed to timely report employment income to MDHHS from Employer #1 or Employer #2.
5. Respondent's failure to timely report income was clearly and convincingly purposeful.
6. Respondent received an OI of \$ [REDACTED] in FAP benefits from [REDACTED] as a result of unreported employment income.
7. On [REDACTED], MDHHS requested a hearing to establish Respondent committed an IPV and received an OI totaling \$ [REDACTED] in FAP benefits for the months from [REDACTED].
8. Respondent has no previous history of IPV's.

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. 7-8) dated [REDACTED]. The document alleged Respondent received separate overissuances of \$ [REDACTED] and \$ [REDACTED] in FAP benefits from [REDACTED]. The document, along with MDHHS testimony, alleged the OIs were 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 Respondent's FAP benefit issuance history (Exhibit 1, p. 49) from [REDACTED]. Issuances totaling \$ [REDACTED] were listed.

MDHHS presented a Wage Match Client Notice (Exhibit 1, pp. 71-72) dated [REDACTED]. The document requested Respondent to verify allegedly previously reported income from Employer#1.

MDHHS presented a request to Employer#1 for Respondent's pay history (Exhibit 1, p. 73) and a corresponding response (Exhibit 1, p. 74). The response from Employer#1 listed various gross weekly pays for Respondent from [REDACTED].

MDHHS presented an Issuance Summary (Exhibit 1, p. 75) and corresponding FAP overissuance budgets (Exhibit 1, pp. 76-85) from [REDACTED]. 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 employment documentation. A total OI of \$ [REDACTED] was calculated.

MDHHS policy categorizes overissuances into three 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 most of Respondent's income with Employer#1 as unreported (the OI budget from October 2013 factored \$ [REDACTED] in reported earnings). 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 MDHHS properly calculated the alleged OI by factoring Respondent's employment income as unreported.

MDHHS presented Respondent's FAP benefit application (Exhibit 1, pp. 13-48). Respondent's electronic signature was dated [REDACTED]. The application reported no employment income (see Exhibit 1, p. 23).

Respondent's failure to report employment income on an application at a time he was employed is highly indicative of a fraudulent intent. Theoretically, Respondent could have verbally reported employment to MDHHS after he applied for FAP benefits; such a scenario is highly improbable considering Respondent's written misreporting. The possible scenario is somewhat more likely in the present case as \$ [REDACTED] in income appeared to be factored in Respondent's FAP eligibility for [REDACTED] (see Exhibit 1, p. 59).

It is notable that Respondent's weekly gross employment earnings from the alleged OI period were never less than \$ [REDACTED]. Such an income would project to \$ [REDACTED]/month in earnings by multiplying the weekly gross earnings by 4 (MDHHS policy actually directs a less-favorable multiplier of 4.15). Even if Respondent had reported to MDHHS monthly employment earnings of \$ [REDACTED] the reporting substantially under-stated Respondent's actual earnings.

MDHHS presented a Wage Match Client Notice (Exhibit 1, p. 153) dated [REDACTED]. The form concerned employment for Respondent's living-together partner (LTP). A start date of [REDACTED], was listed.

Given Respondent's written misreporting, it is probable that any factoring of employment income by MDHHS in Respondent's original benefit issuances concerned the employment of Respondent's LTP. For whatever reason, presented OI budgets did not factor Respondent's LTP's income. Whether presented OI budgets properly or improperly did not factor Respondent's LTP's income is irrelevant as far as unfairness to Respondent because excluding the income can only reduce the alleged OI amount.

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

Presented evidence sufficiently verified Respondent's lack of reporting caused an OI of benefits during the first alleged OI period. Presented evidence established that MDHHS correctly calculated the OI to be \$[REDACTED]. The analysis will proceed to determine if Respondent received a second OI of FAP benefits.

MDHHS presented Respondent's FAP benefit application (Exhibit 1, pp. 86-124). Respondent's electronic signature was dated [REDACTED]. Respondent reported \$0 employment income. MDHHS did not allege that Respondent reported misinformation.

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, p. 125) from [REDACTED]. Monthly issuances of \$[REDACTED] were listed for each benefit month.

MDHHS presented a Wage Match Client Notice (Exhibit 1, pp. 137-138) dated [REDACTED]. The document requested Respondent to verify allegedly previously reported income from Employer#2.

MDHHS presented theWorkNumber.com documents (Exhibit 1, pp. 139-142). Various weekly pays from Employer #2 to Respondent were listed from [REDACTED].

MDHHS presented an Issuance Summary (Exhibit 1, p. 143) and corresponding FAP overissuance budgets (Exhibit 1, pp. 144-151) from [REDACTED]. 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 employment documentation. A total OI of \$[REDACTED] was calculated.

MDHHS did not verify a written misreporting from Respondent concerning the second alleged OI. Despite no written misreporting, Respondent has an obligation to report changes in income within 10 days.

Respondent's earlier misreporting does not verify a later Respondent failure to verbally report employment income. An earlier misreporting renders it more likely that Respondent would have failed to timely report later employment.

It is again found that Respondent failed to timely report employment income concerning the second alleged OI. Thus, MDHHS again properly deprived Respondent of the 20% employment income credit in presented OI budgets.

Presented evidence established that MDHHS correctly calculated a second OI to be \$ [REDACTED]. The analysis will proceed to determine if established OIs were 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 presented a Notice of Case Action (Exhibit 1, pp. 50-55) dated [REDACTED]. The notice informed Respondent of an approval of FAP benefits. A budget summary indicated that no employment income was factored. Boilerplate language indicated that Respondent was to report various changes to MDHHS within 10 days (see Exhibit 1, p. 27); changes in employment and income were among the examples of changes that

required reporting. MDHHS also presented a Change Report (Exhibit 1, pp. 56-57) dated [REDACTED], also informing Respondent of reporting responsibilities.

MDHHS presented a Notice of Case Action (Exhibit 1, pp. 56-63) dated [REDACTED]. The notice informed Respondent of an approval of FAP benefits. A budget summary indicated that \$ [REDACTED] in monthly employment income was factored. Boilerplate language indicated that Respondent was to report various changes to MDHHS within 10 days (see Exhibit 1, p. 62); changes in employment and income were among the examples of changes that required reporting.

MDHHS presented a Notice of Case Action (Exhibit 1, pp. 65-69) dated [REDACTED]. The notice informed Respondent of a change in FAP benefits. A budget summary indicated that \$ [REDACTED] in monthly employment income was factored. Boilerplate language indicated that Respondent was to report various changes to MDHHS within 10 days (see Exhibit 1, p. 68); changes in employment and income were among the examples of changes that required reporting.

MDHHS presented a Notice of Case Action (Exhibit 1, pp. 126-130) dated [REDACTED]. The notice informed Respondent of an approval of FAP benefits. A budget summary indicated that \$ [REDACTED] in monthly employment income was factored. Boilerplate language indicated that Respondent was to report various changes to MDHHS within 10 days (see Exhibit 1, p. 62); changes in employment and income were among the examples of changes that required reporting. MDHHS also presented a Change Report (Exhibit 1, pp. 130-131) dated [REDACTED], also informing Respondent of reporting responsibilities.

MDHHS presented a Notice of Case Action (Exhibit 1, pp. 131-136) dated [REDACTED]. The notice informed Respondent of an approval of FAP benefits. A budget summary indicated that \$ [REDACTED] in monthly employment income was factored. Boilerplate language indicated that Respondent was to report various changes to MDHHS within 10 days (see Exhibit 1, p. 62); changes in employment and income were among the examples of changes that required reporting.

MDHHS alleged Respondent failed to report the start of employment income; this was established. By alleging an IPV, MDHHS essentially contended that Respondent's failure was purposeful and intentional.

In the OI analysis, it was found that Respondent reported a lack of income on an application at a time he was employed. 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 failure to report employment income with Employer#1 was 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. It is further found that the second OI was caused by Respondent's intentional failure to timely 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's by Respondent. Based on presented evidence, a one-year 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] due to an IPV. The MDHHS request to establish an overissuance and a one-year disqualification against Respondent is **APPROVED**.

CG/jaf



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]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]