



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 12, 2017
MAHS Docket No.: 17-001554
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 June 14, 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 appeared and was unrepresented. [REDACTED], Respondent's spouse, testified on behalf of Respondent. [REDACTED] of the [REDACTED] Council participated as an [REDACTED] translator.

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) and Family Independence Program (FIP) benefits.

2. On an unspecified date from January 2015 through March 2015, Respondent began to receive employment income from an employer (hereinafter "Employer").
3. Respondent timely reported income from Employer to MDHHS.
4. From May 2015 through December 2015, Respondent received an OI of \$ [REDACTED] in FIP benefits.
5. MDHHS failed to establish that Respondent received an OI of FAP benefits.
6. On January 31, 2017, MDHHS requested a hearing to establish Respondent committed an IPV and received an OI of \$ [REDACTED] in FIP benefits and \$ [REDACTED] in FAP benefits for the months from May 2015 through December 2015.

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. MDHHS (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131. 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 January 31, 2017. The document alleged Respondent received an overissuance of \$ [REDACTED] in FAP benefits and \$ [REDACTED] in FIP benefits. Both OIs were alleged to have occurred from May 2015 through December 2015. 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 copies of pay stubs (Exhibit 1, pp. 63-64). The pay stubs from Employer to Respondent were dated October 1, 2015, and October 8, 2015. Various earnings for Respondent were indicated.

MDHHS presented an Employee Wage History by Recipient ID (Exhibit 1, p. 65) (hereinafter "IG-001"). The report is known to list earnings reported to the Department of Treasury by employers in Michigan. The document listed various quarterly earnings to Respondent from Employer. Earnings from the 1st quarter of 2015 through the 3rd quarter of 2016 were listed.

MDHHS presented Respondent's FIP benefit issuance history (Exhibit 1, pp. 66-68) from May 2015 through December 2015. Twice per month issuances of \$████ were listed.

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, p. 69) from May 2015 through December 2015. Monthly issuances of \$████ were listed.

MDHHS presented an Issuance Summary (Exhibit 1, p. 70) and corresponding FIP overissuance budgets (Exhibit 1, pp. 71-86) from the alleged OI period. The budgets factored, in part, Respondent's FIP benefit issuances as stated on presented documents. The budgets factored, in part, Respondent's average monthly earnings from the IG-001. A total OI of \$████ 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 \$████ 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). Presented OI budgets for FIP benefits verified an OI above \$████. Thus, it is not relevant whether Respondent or MDHHS caused the error.

It is found that MDHHS established an OI of \$████ in FIP benefits. The analysis will proceed to consider whether Respondent received an OI of FAP benefits.

MDHHS presented an Issuance Summary (Exhibit 1, p. 87) and corresponding FAP overissuance budgets (Exhibit 1, pp. 88-101) from January 2016 through August 2016. 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 the presented earnings statement. A total OI of \$████ was calculated.

Presented FAP 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 presented case comments (Exhibit 1, p. 62) from various Michigan Works! Agency (MWA) staff concerning Respondent's case. Comments dated February 4, 2015, stated Respondent began MWA participation. Comments dated April 7, 2015, stated Respondent submitted two pay stubs from employment.

Respondent's check stubs submission to MWA is persuasive evidence that Respondent reported employment income in April 2015. MDHHS contended a reporting to MWA does not equate to a reporting to MDHHS.

As conceded by MDHHS' testimony, MWA is a contractor of MDHHS. As a contractor of MDHHS, a reporting to MWA fully serves as a reporting to MDHHS.

It is found Respondent reported employment income to MDHHS on April 7, 2015. Thus, all presented FAP-OI budgets are improper because all employment income was factored to be unreported.

FIP budgets do not distinguish between reported and unreported income. Thus, it is not inconsistent that an OI was established for FIP benefits, but not for FAP benefits. The analysis will proceed to determine if the OI of FIP benefits 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 presented Respondent's application for FAP and FIP benefits (Exhibit 1, pp. 11-29). Respondent's electronic signature was dated December 8, 2014. 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. Respondent reported no employment income. MDHHS did not allege that the application reported any misinformation.

MDHHS presented Respondent's application for child care benefits (Exhibit 1, pp. 30-60). Respondent's electronic signature was dated January 15, 2015. No employment income was listed for Respondent's household. MDHHS testimony conceded the application did not report misinformation.

In the OI analysis, it was found that Respondent reported employment earnings to MDHHS (through MWA) on April 7, 2015. Had MDHHS processed Petitioner's reporting of employment income, no OI would have occurred. This consideration is highly indicative that an IPV did not occur.

MDHHS did not present verification of a written misreporting by Respondent which caused an OI of benefits. Generally, MDHHS will have difficulty in establishing a clear and convincing purposeful failure to report information when there is not verification of misreporting causing an OI. 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 FIP benefits from May 2015 through December 2015. 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 May 2015 through December 2015. 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 and/or FIP benefits due to unreported income for the months from May 2015 through December 2015. 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]

Petitioner

[REDACTED]

Respondent

[REDACTED]