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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

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Date Mailed: May 10, 2018
MAHS Docket No.: 17-014876
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, 42 CFR 431.230(b), 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 April 18, 2018, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by Julie Brda, 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. Respondent was clearly instructed of reporting requirements.

3. During all relevant times, Respondent has no apparent impairment to understanding reporting requirements.
4. From November 2014 through June 2015, Respondent received employment income from an employer (hereinafter "Employer1").
5. Respondent purposely failed to report to MDHHS employment income from Employer1.
6. As a result of Respondent's purposeful failure to report employment income from Employer1, Respondent received an OI of \$1,967 in FAP benefits from January 2015 through May 2015.
7. From August 2015 through August 2016, Respondent received employment income from a second employer (hereinafter "Employer2").
8. MDHHS calculated that Respondent received an OI of FAP benefits for October 2015 and November 2015 and the months from May 2016 through July 2016, based on Respondent's incorrect income from Employer2.
9. On October 9, 2017, MDHHS requested a hearing to establish Respondent committed an IPV and received OI of benefits over the following time periods:
 - \$1,967 from January 2015 through May 2015
 - \$860 from October 2015 through November 2015
 - \$2,313 from May 2016 through July 2016
10. As of the date of hearing, Respondent had no previous IPV disqualification.

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' Hearing Summary and testimony alleged that Respondent received an OI of \$5,140 based on unbudgeted employment income. The OI was based on three different periods (\$1,967 from January 2015 through May 2015, \$860 from October 2015 through November 2015, and \$2,313 from May 2016 through July 2016). MDHHS made similar or identical allegations on an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 5-6) dated October 9, 2017, sent to Respondent as part of MDHHS' prehearing procedures.

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 must be reported within 10 days of receiving the first payment reflecting the change. *Id.*

MDHHS presented Respondent's FAP benefit issuance history from the alleged OI period (Exhibit A, pp. 187-189). Various monthly issuance amounts were listed.

MDHHS presented Respondent's employment documents from Employer1 (Exhibit A, pp. 146-156). Respondent's gross pay amounts and dates from November 2014 through June 2015 were listed.

MDHHS presented an Issuance Summary (Exhibit 1, p. 174) and corresponding FAP overissuance budgets (Exhibit 1, pp. 164-173) for January 2015 through May 2015. The OI 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 documents. The budgets deprived Respondent of a 20% employment income credit given when employment income is reported. A total OI of \$1,967 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 that 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 because the budgets factored Respondent's income with Employer1 as unreported. Factoring employment income as unreported deprives clients from a 20% employment income credit (see BEM 556). MDHHS contended that depriving Respondent of the credit was proper because Respondent failed to report employment income from Employer1.

MDHHS presented Respondent's application for medical benefits (Exhibit A, pp. 46-77). Respondent's electronic signature was dated November 25, 2014. Respondent reported no employment income (see Exhibit A, p. 56).

MDHHS presented Respondent's application for FAP benefits (Exhibit A, pp. 78-112). Respondent's electronic signature was dated February 24, 2015. Respondent reported no employment income (see Exhibit A, p. 89).

Presented reporting documents were persuasive verification that Respondent twice failed in writing to report employment income from Employer1. Respondent's failure to report employment income on multiple reporting documents persuasively established that MDHHS properly deprived Respondent of the 20% credit for reporting income.

Presented evidence sufficiently verified Respondent's lack of reporting caused an OI of \$1,967 for the period from January 2015 through May 2015, MDHHS also alleged that two other OIs occurred due to Respondent's unreported income from Employer2.

MDHHS presented Respondent's employment documents from Employer2 (Exhibit A, pp. 157-163). Respondent's gross pay amounts and dates from August 21, 2015, through August 5, 2016, were listed. Respondent's pay amounts were listed in a column titled, "Debit". Taxes paid by Respondent were listed under a column titled, "Credits". A running total of Respondent's payments were listed in a column titled, "Balance".

MDHHS presented an Issuance Summary (Exhibit 1, p. 179) and corresponding FAP overissuance budgets (Exhibit 1, pp. 175-178) for October 2015 and November 2015. The OI budgets factored, in part, Respondent's FAP benefit issuances as stated on presented documents. The budgets deprived Respondent of a 20% employment income credit given when employment income is reported. The October 2015 budget calculated Respondent's monthly employment as \$6,429.54. The November 2015 OI budget factored employment income of \$1,580.08. A total OI of \$860 was calculated.

MDHHS presented an Issuance Summary (Exhibit 1, p. 186) and corresponding FAP overissuance budgets (Exhibit 1, pp. 180-185) from May 2016 through July 2016. The OI budgets factored, in part, Respondent's FAP benefit issuances as stated on presented documents. The budgets deprived Respondent of a 20% employment income credit given when employment income is reported. The budgets factored monthly gross employment income for Respondent as follows: over \$14,000 for May 2016, over \$18,000 for June 2016, and over \$21,000 for July 2016. A total OI of \$2,313 was calculated.

Upon review of income documents from Employer2, MDHHS appeared to budget running totals of Respondent's total income from her employment as Respondent weekly income. For example, the OI budget for July 2016 factored the following gross pays for Respondent (not counting cents): \$5,012 for July 1, 2016, \$5,213 for July 8, 2016, \$5,295 for July 15, 2016, and \$5,637 for July 22, 2016. MDHHS calculated Respondent's total income for the month to be over \$21,000. Respondent's actual income for the month was closer to \$600. The same problem infected all OI budgets from October 2015 through July 2016. Due to improperly budgeted employment income, none of the budgets can be deemed as reliable proof of an OI.

Based on the evidence, it is found that MDHHS failed to establish an OI against Respondent for the months from October 2015 through July 2016. MDHHS alleged that the OI that was established was caused by Respondent's 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).

DHS 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 application for FAP benefits (Exhibit A, pp. 11-45). Respondent's electronic signature was dated January 2, 2014. The application included boilerplate language that clients are to report changes to MDHHS within 10 days (see Exhibit A, p. 27).

The evidence established that Respondent failed to report employment income on applications dated November 25, 2014, and February 24, 2015, despite being employed as of both dates. 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 written statements were 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.

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 Respondent previously committed an IPV. Thus, a one-year disqualification period 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 committed an IPV related to an OI of \$1,967 in FAP benefits due to unreported income for the months from January 2015 through May 2015. The MDHHS request to establish Respondent committed an IPV and to impose a one-year disqualification against Respondent is **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 an OI of \$860 in FAP benefits from October 2015 and November 2015 and \$2,313 in FAP benefits from May 2016 through July 2016. 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 established that Respondent received \$1,967 in over-issued FAP benefits from January 2015 through May 2015. The MDHHS request to establish an overissuance is **PARTIALLY APPROVED**.

CG/



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]
MDHHS-Wayne-49-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

[REDACTED]
Policy Recoupment
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MAHS