



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: June 11, 2018
MAHS Docket No.: 17-016727
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 scheduled for June 6, 2018, from Detroit, Michigan. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled time. The Michigan Department of Health and Human Services (MDHHS) was represented by Jason Rupp, regulation agent, with the Office of Inspector General. Respondent did not appear for the hearing.

ISSUES

The first issue is whether MDHHS established that Respondent committed an intentional program violation (IPV) which justifies imposing an IPV disqualification against Respondent.

The second issue is whether MDHHS established that Respondent received an overissuance (OI) of benefits.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On July 5, 2013, Respondent submitted to MDHHS an application for Food Assistance Program (FAP) benefits. Boilerplate application language states that

clients are to report changes, including income, to MDHHS within 10 days. (Exhibit A, pp. 11-24)

2. On July 10, 2013, MDHHS approved Respondent's FAP application and mailed a Notice of Case Action informing Respondent of the approval. Boilerplate language on the notice (and a Change Report mailed with the notice) states that clients are to report changes, including income, to MDHHS within 10 days. (Exhibit A, pp. 25-32)
3. On an unspecified date during the 4th quarter of 2013, Respondent began receiving employment income from an employer (hereinafter "Employer"). Respondent received from Employer \$ [REDACTED] during the 4th quarter of 2013. During the 1st quarter of 2014, Respondent received \$ [REDACTED] from Employer. (Exhibit A, p. 33)
4. From November 2013 through March 2014, Respondent received \$ [REDACTED]/month in FAP benefits. (Exhibit A, pp. 38-39)
5. On an unspecified date, MDHHS calculated that Respondent received an OI of \$ [REDACTED] in FAP benefits from November 2013 through March 2014. MDHHS calculated the OI based, in part, by averaging Respondent's income from Employer over the alleged OI period. MDHHS factored the income from Employer as unreported. The OI was based on original issuances of \$ [REDACTED]/month. (Exhibit A, pp. 40-52)
6. On December 5, 2017, MDHHS requested a hearing to establish Respondent received an OI of \$ [REDACTED] in FAP benefits for the months November 2013 through March 2014 as a result of unreported employment income. MDHHS also requested a hearing to establish a one-year IPV disqualification against Respondent. (Exhibit A, p. 1)

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 \$ [REDACTED] in FAP benefits based on unbudgeted employment income. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement

(Exhibit A, pp. 6-7) dated December 5, 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 (January 2015), p. 7. Changes [in income] must be reported within 10 days of receiving the first payment reflecting the change. *Id.*

MDHHS presented FAP budgets demonstrating how an OI was calculated. The OI budgets calculated Respondent's correct issuance based on previously unbudgeted employment income from Employer. Notably, the budgets deprived Respondent of a 20% income credit. BEM 556 states that clients who fail to report employment income are not entitled to the credit. Thus, for the budgets to be correct, it must be established that Respondent failed to report employment income.

A regulation agent for MDHHS testified that a review of Respondent's file revealed no evidence that Respondent reported employment income from Employer during the OI period. Respondent presented no evidence suggesting otherwise.

MDHHS testimony indicated that Respondent's actual pay amounts and pay dates could not be obtained; the testimony was consistent with correspondence from Employer which stated that a computer crash rendered employment records from before July 2015 to be unavailable (Exhibit A, pp. 36-37). Instead of using Respondent's actual pay dates, MDHHS calculated Respondent's OI by averaging Respondent's quarterly employment income from Employer. MDHHS also relied on Respondent's actual issuances from the alleged OI period. The evidence established that Respondent received an OI of \$ [REDACTED] from the alleged OI period.

Presented evidence sufficiently verified Respondent's failure to report employment income resulted in an OI of benefits during the alleged OI periods. Presented evidence also established that MDHHS correctly calculated the OI to be \$573. Thus, MDHHS established an OI of \$ [REDACTED] against Respondent.

MDHHS also requested a hearing to establish a one-year IPV disqualification against Respondent. MDHHS' Hearing Summary and testimony alleged that Respondent committed an IPV by failing to timely report employment income. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 6-7) dated December 5, 2017, sent to Respondent as part of MDHHS' prehearing procedures.

[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 established that Respondent received an overissuance which covered a period of five months and totaled \$█████. Neither the OI amount nor the duration of the OI are particularly indicative that Respondent's failure to timely report income was intentional.

Generally, the most persuasive evidence to establish a client's intent is a misreporting of information by the client. MDHHS did not present evidence that Respondent ever misreported employment income.

MDHHS presented various documents which included boilerplate language reminding clients to report all changes, including income. This consideration is supportive in finding that Respondent should have been aware of the need to report changes, though it does not clearly and convincingly establish that Respondent intentionally failed to report changes.

Based on the evidence, MDHHS did not clearly and convincingly establish that Respondent intentionally failed to report employment income. Thus, it is found that Respondent did not commit an IPV.

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.*

Without a finding that a client committed an IPV, an IPV disqualification cannot follow. Thus, MDHHS will be denied their request to establish a one-year 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 an OI of \$█ in FAP benefits over the period from November 2013 through March 2014. The MDHHS request to establish an OI against Respondent is **GRANTED**.

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 justifying a one-year period of disqualification. The MDHHS request to establish an IPV disqualification against Respondent is **DENIED**.

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) 763-0155; 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

Heather Englehart
MDHHS-Midland-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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