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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: June 19, 2018  
MAHS Docket No.: 17-016755  
Agency No.: ██████████  
Petitioner: OIG  
Respondent: ██████████

**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 June 6, 2018, from Detroit, Michigan. The hearing was held at least 30 minutes after the scheduled time. The Michigan Department of Health and Human Services (MDHHS) was represented by Chris Tetloff, 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 November 9, 2015, Respondent submitted to MDHHS an application for Food Assistance Program (FAP) benefits. Boilerplate application language stated that clients are to report changes, including income, to MDHHS within 10 days. (Exhibit A, pp. 12-28)

2. On November 12, 2015, 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. 32-37)
3. From December 22, 2015, through January 17, 2017, Respondent received ongoing employment income from an employer (hereinafter "Employer1"). (Exhibit A, pp. 47-49)
4. From April 25, 2016, through October 3, 2016, Respondent received ongoing employment income from an employer (hereinafter "Employer2"). (Exhibit A, p. 46)
5. On October 6, 2016, MDHHS received Respondent's Redetermination for FAP benefits. Respondent reported employment income from Employer1. Respondent's submission to MDHHS also included pay stubs from September 2016. (Exhibit A, pp. 38-45)
6. From February 2016 through October 2016, MDHHS issued \$[REDACTED]/month in FAP benefits to Respondent. The FAP benefits issued to Respondent did not factor Respondent's income from Employer1 or Employer2.
7. On an unspecified date, MDHHS calculated that Respondent received an OI of \$[REDACTED] in FAP benefits for the period from February 2016 through October 2016. The budgets factored \$[REDACTED]/month in previous issuances. The budgets also factored Respondent's wages from Employer1 and Employer2 as unreported. (Exhibit A, pp. 52-70)
8. On December 6, 2017, MDHHS requested a hearing to establish Respondent received an OI of \$[REDACTED] in FAP benefits for the months from February 2016 through October 2016 (hereinafter "OI period") 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 during the alleged OI period. MDHHS alleged the OI was caused by

Respondent's failure to report employment income. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 6-7) 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. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. *Id.* Recoupment is a MDHHS action to identify and recover a benefit overissuance. BAM 700 (January 2018) pp. 1-2.

There are three different types of overissuances. An agency error is caused by an incorrect MDHHS action (including a delay or inaction). A client error occurs when the client received more benefits than they were entitled to because of giving incorrect or incomplete information to MDHHS. An intentional program violation occurs when a client intentionally misreported or failed to report information. Client and Agency errors are not pursued if the estimated amount is less than \$250 per program. *Id.*, pp. 4-8.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes in income must be reported within 10 days of receiving the first payment reflecting the change. BAM 105 (July 2015), pp. 10-11.

Presented OI budgets calculated Respondent's correct issuance based on previously unbudgeted employment income from Employer1 and Employer2. 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. No evidence was presented to suggest Respondent timely reported to MDHHS her income from Employer1 or Employer2. Given the evidence, it is found that Respondent did not report employment income from Employer1 or Employer2 and that the presented OI budgets were correct.

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 \$2,450. Thus, MDHHS established an OI of \$██████ 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 purposely 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.

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 dated November 9, 2015, which included boilerplate language informing clients of a need to report changes within 10 days. Respondent's failure to report employment could be reasonably explained by Respondent forgetting to report. Though reporting documents advise clients to report changes within 10 days, they do not ensure that a client would not forget. It is also possible that a client did not bother to read boilerplate language despite warnings to do so.

MDHHS established that Respondent received an overissuance of \$ [REDACTED] which covered a period of several months. Neither the OI amount nor the duration of the OI "clearly and convincingly" justify an inference that Respondent purposely failed to report employment income to MDHHS.

MDHHS did not present verification of a written misreporting by Respondent. Generally, MDHHS will have difficulty in establishing a client's purposeful failure to report information without evidence of misreporting. Presented evidence was not persuasive in overcoming the general rule.

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 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**.

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 \$ [REDACTED] in FAP benefits over the period from February 2016 through October 2016. The MDHHS request to establish an OI against Respondent is **APPROVED**.

CG/

  
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**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**

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

M Shumaker  
Policy Recoupment  
C Gardocki  
MAHS