



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: July 3, 2018
MAHS Docket No.: 17-017035
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 scheduled for June 27, 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 Ryan Sevenski, regulation agent with the Office of Inspector General. Respondent did not appear for the hearing.

The hearing notice sent to Respondent was returned as undeliverable. The hearing proceeded under 7 CFR 273.16(e)(3)(i) as there was no known better address for Respondent.

ISSUES

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

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

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 April 5, 2013, Respondent electronically submitted to MDHHS an application for FAP benefits. Boilerplate language stated that the client's signature is certification that an information booklet was read (which includes information that clients are to report changes to MDHHS within 10 days). (Exhibit A, pp. 12-23)
2. On April 5, 2013, MDHHS mailed Respondent a Notice of Case Action informing Respondent of an approval of FAP benefits. Boilerplate language stated that clients are to report changes in income and address within 10 days. A Change Report mailed with the Notice of Case Action also included boilerplate language that clients are to report to MDHHS changes within 10 days. (Exhibit A, pp. 24-31)
3. From April 26, 2013, through January 24, 2014, Respondent received ongoing employment income from an employer (hereinafter "Employer1"). (Exhibit A, pp. 32-34)
4. From June 2013 through January 2014, Respondent received a total of \$ [REDACTED] in FAP benefits (see Exhibit A, p. 52). Respondent's issuances did not factor Respondent's income from Employer1.
5. On October 23, 2014, Respondent submitted to MDHHS an application for FAP benefits. Boilerplate language stated that the client's signature is certification that an information booklet was read (which includes information that clients are to report changes to MDHHS within 10 days). (Exhibit A, pp. 53-72)
6. On October 23, 2014, MDHHS mailed Respondent a Notice of Case Action informing Respondent of an approval of FAP benefits. Boilerplate language stated that clients are to report changes in income and address within 10 days. A Change Report mailed with the Notice of Case Action also included boilerplate language that clients are to report to MDHHS changes within 10 days. (Exhibit A, pp. 73-78)
7. On January 6, 2015, MDHHS mailed Respondent a Notice of Case Action informing Respondent of an approval of FAP benefits. Boilerplate language stated that clients are to report changes in income and address within 10 days. A Change Report mailed with the Notice of Case Action also included boilerplate language that clients are to report to MDHHS changes within 10 days. (Exhibit A, pp. 79-82)
8. From February 13, 2015, through February 19, 2016, Respondent received ongoing employment income from an employer (hereinafter "Employer2"). (Exhibit A, pp. 83-85)

9. From April 2015 through September 2015, Respondent received a total of \$█████ in FAP benefits (see Exhibit A, p. 99). Respondent's issuances did not factor income from Employer2.
10. On October 21, 2016, MDHHS calculated that Respondent received an OI of \$█████ from June 2013 through January 2014 due to Respondent's unreported income from Employer1. (Exhibit A, pp. 35-51). MDHHS also calculated that Respondent received an OI of \$█████ from April 2015 through September 2015 due to Respondent's unreported income from Employer2. (Exhibit A, pp. 86-98)
11. On December 28, 2017, MDHHS requested a hearing to establish that Respondent received FAP-benefit OIs of \$█████ from June 2013 through January 2014 and \$█████ from April 2015 through September 2015. MDHHS also requested a hearing to establish that Respondent committed an IPV justifying imposing a 1-year disqualification period.
12. As of the date of hearing, Respondent had no known previous IPV disqualifications.

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 OIs of \$█████ from June 2013 through January 2014 and \$█████ from April 2015 through September 2015. 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. Recoupment is a MDHHS action to identify and recover a benefit overissuance. BAM 700 (January 2016), pp. 1-2.

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 (January 2015), p. 7.

Alleged OI of \$ [REDACTED] from June 2013 through January 2014

MDHHS presented FAP budgets demonstrating how the OI was calculated. The OI budgets calculated Respondent's correct FAP issuance based on previously unbudgeted employment income from Employer1. The budgets used Respondent's actual pays listed on Respondent's employment history with Employer1. The budgets factored Respondent's actual issuances from the OI period. A regulation agent credibly testified that the only change from the original FAP budgets was inclusion of Respondent's employment income from Employer1. A total OI of \$ [REDACTED] was calculated for the OI period.

The OI budgets deprived Respondent of a 20% income credit for reporting employment income. 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.

The exclusion of employment income in original FAP issuances is consistent with Respondent not reporting employment income. A MDHHS regulation agent credibly testified that a search of Respondent's case file revealed no evidence that Respondent timely reported income from Employer1; Respondent presented no evidence indicating otherwise. The evidence established that Respondent did not timely report income from Employer1; thus, MDHHS properly deprived Respondent of the 20% credit for reporting employment income.

Based on the evidence, MDHHS established that Respondent's failure to report income from Employer1 resulted in an OI of \$ [REDACTED] from June 2013 through January 2014. Thus, MDHHS established an OI of \$ [REDACTED] against Respondent.

Alleged OI of \$ [REDACTED] from April 2015 through September 2015

MDHHS presented FAP budgets demonstrating how the OI was calculated. The OI budgets calculated Respondent's correct FAP issuance based on previously unbudgeted income from Employer2. The budgets used Respondent's actual pays listed on Respondent's employment history with Employer2. The budgets factored Respondent's actual issuances from the OI period. A regulation agent credibly testified that the only change from the original budgets was inclusion of Respondent's employment income from Employer. A total OI of \$ [REDACTED] was calculated for the OI period.

The OI budgets deprived Respondent of a 20% income credit for reporting employment income. The same evidence and analysis applied to the earlier OI applies to the OI from April 2015 through September 2015. MDHHS properly deprived Respondent of the 20% credit for reporting employment income and the budgets appeared to properly calculate Respondent's OI of FAP benefits. Thus, MDHHS established an OI of \$ [REDACTED] against Respondent.

Alleged IPV

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).

It has already been established that Respondent received an overissuance totaling \$ [REDACTED] due to Respondent's failure to report income from two different employers. For an IPV to be established, Respondent's failure to report employment income must be intentional.

MDHHS presented multiple documents with boilerplate language informing clients of a need to report changes within 10 days. The evidence was supportive that Respondent was given instruction of clear and correct reporting requirements.

Respondent's OI totaled \$ [REDACTED] and the combined OI periods exceeded one year in duration. The amount and duration of the OI was consistent with an intentional failure to report employment income to MDHHS.

Given the evidence, it is found MDHHS clearly and convincingly established Respondent committed an IPV by intentionally failing to report employment income. MDHHS alleged that the IPV justified imposing a disqualification of one year against Respondent.


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 IPV committed by Respondent. Based on presented evidence, a disqualification of one year is proper.

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 FAP-benefit Ols of \$ [REDACTED] from June 2013 through January 2014 and \$ [REDACTED] from April 2015 through September 2015 due to an IPV. The MDHHS request to establish an overissuance and a one-year disqualification against Respondent is **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) 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

Laura Bensinger
MDHHS-Eaton-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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

M Shumaker
Policy Recoupment
C Gardocki
MAHS