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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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[REDACTED] MI [REDACTED]-[REDACTED]

Date Mailed: July 5, 2018
MAHS Docket No.: 18-000522
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 28, 2018, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by Chris Tetloff, regulation agent with the Office of Inspector General. Respondent appeared and was unrepresented.

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 October 24, 2016, Respondent electronically submitted to MDHHS an application for FAP benefits. Boilerplate language stated that the client's signature is certification that an informational booklet was read (which includes

information that clients are to report changes to MDHHS within 10 days). (Exhibit A, pp. 12-28)

2. On November 22, 2016, MDHHS mailed Respondent a Notice of Case Action informing Respondent of an approval of ongoing FAP benefits. Boilerplate language stated that clients are to report changes in income within 10 days. A Change Report mailed with the Notice of Case Action included similar boilerplate language concerning reporting changes. (Exhibit A, pp. 29-35)
3. On December 6, 2016, Respondent electronically submitted to MDHHS an application for State Emergency Relief (SER) benefits. Respondent reported child support income, but not unemployment compensation benefits (UCB). (Exhibit A, pp. 36-57)
4. On December 20, 2016, Respondent electronically submitted to MDHHS an application for SER. Respondent reported child support income, but not UCB. (Exhibit A, pp. 58-78)
5. On March 17, 2017, Respondent applied for cash benefits and SER. Respondent's application again reported child support, but not UCB. (Exhibit A, pp. 79-101)
6. On October 13, 2017, a MDHHS recoupment specialist documented a collateral contact with the Michigan Unemployment Agency. The specialist documented that Respondent began receiving biweekly UCB payments on December 6, 2016. (Exhibit A, pp. 104). Respondent's UCB history listed full UCB payments to Respondent through March 18, 2017. Respondent's final UCB payment was on April 2, 2017. (Exhibit A, pp. 104-107)
7. On October 16, 2017, MDHHS calculated that Respondent received an OI of \$[REDACTED] in FAP benefits from February 2017 through April 2017 due to unbudgeted UCB. (Exhibit A, pp. 111-117)
8. On January 12, 2018, MDHHS requested a hearing to establish that Respondent received an OI of \$[REDACTED] in FAP benefits from February 2017 through April 2017. MDHHS also requested a hearing to establish that Respondent committed an IPV justifying imposing a 1-year disqualification period.
9. 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 an OI of \$[REDACTED] in FAP benefits from February 2017 through April 2017 due to unbudgeted UCB. 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.

MDHHS presented FAP budgets demonstrating how an OI was calculated. The OI budgets calculated Respondent's correct issuance based on previously unbudgeted UCB. The budgets factored Respondent's actual FAP issuances from the alleged OI period. The budgets used Respondent's actual pays from Respondent's UCB history. A total OI of \$683 was calculated for the OI period. Respondent asserted no objections to the budgets.

Presented evidence established that Respondent received an OI of \$[REDACTED] from February 2017 through April 2017. Thus, MDHHS established an OI of \$[REDACTED] against Respondent. MDHHS also alleged that Respondent's failure to report UCB was an 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).

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.

It has already been established that Respondent received an OI of \$ [REDACTED] in FAP benefits due to unbudgeted UCB. MDHHS alleged that UCB was unbudgeted due to Respondent's intentional failure to report the income.

MDHHS presented multiple documents with boilerplate language informing clients of a need to report changes within 10 days. The evidence established that Respondent was clearly and correctly instructed of reporting requirements.

MDHHS presented SER applications dated December 6, 2016; December 20, 2016; and March 17, 2017; each reported no UCB. MDHHS alleged each failure to report UCB was a misreporting by Respondent.

Respondent's UCB history obtained from Bridges listed UCB payments starting in November 2016; a recoupment specialist documented that the Bridges UCB history was inaccurate after a collateral contact with the MUA. The recoupment specialist (who did not testify) documented that a MUA representative reported that Respondent's biweekly UCB began on December 6, 2016. The documentation appeared to be accurate based on its details (such as when Respondent received her first biweekly payment) and clarity.

Respondent contended that her UCB actually started after Christmas; and therefore, the SER applications dated December 6, 2016, and December 20, 2016, accurately reported a lack of income. Respondent's testimony seemed credible enough, but it was inconsistent with presented documentation and uncorroborated. Respondent's testimony also failed to explain why she would not have reported UCB on an application for SER and Family Independence Program (FIP) submitted to MDHHS in March 2017.

Respondent's multiple failures to report UCB on multiple SER applications established that Respondent intentionally failed to report UCB for the purpose of receiving an OI of benefits. Thus, MDHHS established an IPV by 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 that Respondent previously committed an IPV. Thus, a one-year disqualification period 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 an OI of \$ [REDACTED] in FAP benefits from February 2017 through April 2017 due to an IPV. The MDHHS requests to establish an overissuance and 1-year disqualification against Respondent are **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

Kathleen Verdoni
MDHHS-Saginaw-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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M Shumaker
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C Gardocki
MAHS