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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: July 3, 2018
MAHS Docket No.: 18-000527
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 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 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 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 February 9, 2016 Respondent electronically submitted to MDHHS an application for FAP benefits. Respondent's household included her spouse (hereinafter "Spouse"). Respondent reported self-employment income of

\$[REDACTED]/month for Spouse. 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. 13-33)

2. On February 10, 2016, MDHHS mailed a Notice of Case Action approving Respondent for FAP benefits. A budget summary listed that \$[REDACTED] in self-employment income was factored in Respondent's ongoing eligibility. The notice stated that Respondent was to report employment income which exceeded \$[REDACTED]/month. Boilerplate language stated that clients are to report changes in income within 10 days. (Exhibit A, pp. 34-37)
3. On February 10, 2016, MDHHS mailed Respondent notice that a Semi-Annual Contact Report (SACR) would be mailed to Respondent six months into the benefit period. Boilerplate language also advised Respondent that employment income changing by \$100 would have to be reported on the SACR. (Exhibit A, p. 38)
4. On June 27, 2016, MDHHS received Respondent's SACR. Respondent reported that household income of \$[REDACTED] had not changed by more than \$100. (Exhibit A, pp. 39-40)
5. On June 28, 2016, MDHHS approved Respondent's FAP eligibility beginning August 2016, in part, based on ongoing self-employment of \$[REDACTED] (Exhibit A, pp. 41-44)
6. Respondent received the following gross employment income: \$[REDACTED] on March 11, 2016; \$[REDACTED] on March 25, 2016; \$[REDACTED] on April 8, 2016; \$[REDACTED] on April 22, 2016; \$[REDACTED] on May 6, 2016; \$[REDACTED] on May 20, 2016; \$[REDACTED] on June 3, 2016; \$[REDACTED] on June 17, 2016; \$[REDACTED] on July 1, 2016; \$[REDACTED] on July 15, 2016; and \$[REDACTED] on July 29, 2016. (Exhibit A, pp. 47-56)
7. On May 10, 2017, MDHHS calculated that Respondent received \$[REDACTED] in over-issued FAP benefits from May 2016 through July 2016. (Exhibit A, pp. 64-71)
8. On January 12, 2018, MDHHS requested a hearing to establish that Respondent received an OI of \$[REDACTED] in FAP benefits from May 2016 through July 2016. Respondent also requested a hearing to establish that Respondent committed an IPV justifying imposing a 1-year disqualification period. (Exhibit A, p. 1)
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 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.

FAP groups with countable earnings, as currently are assigned to the simplified reporting (SR) category. This reporting option increases FAP participation by employed households and provides workload relief. Simplified reporting groups are required to report only when the group's actual gross monthly income (not converted) exceeds the SR income limit for their group size. No other change reporting is required. If the group has an increase in income, the group must determine their total gross income at the end of that month. If the total gross income exceeds the group's SR income limit, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. BAM 200 (December 2013), p. 1.

Respondent was eligible for SR based on reporting of Spouse's monthly household income of \$██████ (\$██████ in countable income following a 25% self-employment deduction). Respondent began receiving employment income in March 2016. MDHHS alleged that Respondent received an OI because she exceeded the simplified reporting limit of \$1,726 in March 2016. After applying a 32-day period before starting the OI period, MDHHS determined that May 2015 was Respondent's first overissuance month.

For March 2016, Respondent's gross employment income was \$██████ Adding Respondent's income to Spouse's income results in a total income of \$██████ The

income was below the SR reporting limit, and therefore, did not have to be reported or budgeted by MDHHS.

For April 2016, Respondent's gross employment income was \$ [REDACTED]. Adding Respondent's income to Spouse's income results in a total income of \$ [REDACTED]. The income was again below the SR reporting limit, and therefore, did not have to be reported or budgeted by MDHHS.

For May 2016, Respondent's and Spouse's combined income was \$ [REDACTED] and indeed exceeded SR limits. Per SR policy, Respondent's reporting obligation begins the first day after the month that SR reporting limits were exceeded. After applying the 10-10-12 rule (which requires MDHHS to start an OI the first full month after 32 days from the date of change), the first month that an OI could be established would be August 2016. MDHHS did not allege an OI from August 2016 or later.

Given the evidence, it is found that MDHHS failed to establish that Respondent received an OI of FAP benefits from May 2016 through July 2016. MDHHS also alleged that Respondent committed 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** 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.

MDHHS alleged that Respondent intentionally failed to report exceeding simplified reporting limits. For purposes of this decision, the MDHHS allegation will be accepted.

Even if Respondent purposely failed to report to MDHHS that her FAP group's income exceeded SR income limits, Respondent could not have committed an IPV unless the intentional failure to report caused an overissuance of FAP benefits. MDHHS failed to establish an OI. Without an OI of benefits, a finding that Respondent committed an IPV cannot follow. Thus, MDHHS will be denied their request to establish an IPV disqualification period 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 received an overissuance of \$█ in FAP benefits from May 2017 through July 2017 due to an IPV. MDHHS also failed to establish that Respondent committed an IPV justifying a disqualification of FAP benefits. The MDHHS requests to establish an overissuance and a one-year disqualification against Respondent are **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

Kathleen Verdoni
MDHHS-Saginaw-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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