



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: July 5, 2018
MAHS Docket No.: 18-000691
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 July 2, 2018, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by Kelvin Christian, 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. In October 2015, Respondent was an ongoing Food Assistance Program (FAP) and Family Independence Program (FIP) recipient.

2. From October 9, 2015, through March 25, 2016, Respondent received ongoing employment income from an employer (hereinafter "Employer"). (Exhibit A, pp. 11, 13-15)
3. On February 29, 2016, Respondent electronically submitted to MDHHS an application for State Emergency Relief (SER) benefits. Respondent reported no employment income. Boilerplate language stated that the client's signature was certification, subject to perjury, that all statements within the application were true. (Exhibit A, pp. 22-36)
4. From December 2015 through March 2016, Respondent received a total of \$ [REDACTED] in FIP benefits. (Exhibit A, pp. 37-38)
5. From October 2015 through March 2016, Respondent received a total of \$ [REDACTED] in FAP benefits. (Exhibit A, p. 39)
6. On October 12, 2016, MDHHS calculated that Respondent received an OI of \$ [REDACTED] in FIP benefits due to unbudgeted employment income. MDHHS also calculated that Respondent received an OI of \$ [REDACTED] in FAP benefits based on unreported employment income. Both OI periods were from December 2015 through March 2016. (Exhibit A, pp. 40-58)
7. On January 25, 2018, MDHHS requested a hearing to establish that Respondent received a FAP-benefit OI of \$ [REDACTED] and FIP benefit OI of \$ [REDACTED] - both OIs from the period of December 2015 through March 2016. MDHHS also requested a hearing to establish that Respondent committed an IPV justifying imposing a 1-year disqualification period.
8. During the hearing, MDHHS acknowledged that the \$1,412 OI of FAP benefits was paid by Respondent and that Respondent's balance on the FIP OI was \$ [REDACTED]
9. As of the date of hearing, Respondent had no known previous IPV disqualifications.
10. During all relevant times, Respondent had no apparent impairments to understanding reporting requirements.

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).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131. 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 from December 2015 through March 2016 a FAP benefit OI of \$ [REDACTED] and a FIP benefit OI of \$ [REDACTED]. During the hearing, MDHHS acknowledged that Respondent paid off the FAP OI; thus, a hearing decision establishing an OI of FAP benefits was unnecessary. MDHHS' hearing request will be dismissed concerning establish an OI of FAP benefits. The analysis will proceed to consider the alleged OI of FIP benefits.

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.

MDHHS presented FIP budgets demonstrating how the OI was calculated. The OI budgets calculated Respondent's correct FIP issuance based on previously unbudgeted employment income from Employer. The budgets used Respondent's actual pays listed on Respondent's employment history with Employer. The budgets factored Respondent's actual issuances from the OI period. A total OI of \$1,612 was calculated.

The OI budgets appeared to properly factor all relevant budget factors in determining the OI amount; Respondent presented no evidence indicating otherwise. Given the evidence, it is found that MDHHS established that Respondent received an OI of \$ [REDACTED] in FIP benefits. MDHHS alleged that the OI was caused by Respondent's 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).

Presented OI budgets established that Respondent received FAP and FIP OIs due to unbudgeted income. MDHHS alleged that Respondent's employment income was unbudgeted because of Respondent's intentional failure to not report and/or misreport the income.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2016), p. 11. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015), p. 8.

Respondent's SER application dated February 29, 2016, reported no employment income. At the time of SER application, Respondent was employed. Respondent's statement was made subject to penalties of perjury. Respondent's work history stated that Respondent was "no longer employed as of" March 9, 2016. Respondent's failure to report employment income to MDHHS on her SER application at a time she was employed is consistent with an intentional failure to report income.

Respondent testified that she spoke to her specialist about her employment. Respondent's testimony was lacked credibility due to the lack of corroboration and inconsistency with her reporting on the SER application as well as receipt of over-issued benefits.

Respondent's written misreporting was persuasive evidence that Respondent intentionally failed to provide information which was needed by MDHHS to issue the proper amount of benefits. There was no evidence that Respondent was limited in understanding the clear and correct reporting requirements.

It is found MDHHS clearly and convincingly established Respondent committed an IPV by 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 history of IPV's 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 withdrew their request to establish that Respondent received an OI of FAP benefits. Concerning establishing an OI of FAP benefits, MDHHS' hearing request is **DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent received a total overissuance of \$ [REDACTED] in FIP benefits (\$ [REDACTED] after partial payment by Respondent) from December 2015 through March 2016 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

Clarence Collins
MDHHS-Wayne-55-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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

M Shumaker
Policy Recoupment
C Gardocki
MAHS