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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: July 2, 2018
MAHS Docket No.: 18-003693
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 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.

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 September 19, 2014 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. 11-28)

2. On September 20, 2014, MDHHS mailed Respondent a Notice of Case Action informing Respondent of an approval of FAP benefits for September 2014 and October 2014. 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. 29-34)
3. On November 21, 2014 MDHHS mailed Respondent a Notice of Case Action informing Respondent of FAP eligibility from November 2014. Boilerplate language stated that clients are to report changes in income and address within 10 days. (Exhibit A, pp. 35-38)
4. From March 3, 2015, through at least January 2017, Respondent received ongoing income from an employer (hereinafter "Employer"). (Exhibit A, pp. 42-44)
5. On June 9, 2015, MDHHS mailed Respondent a Wage Match Client Notice (Exhibit A, pp. 39-40). Respondent did not return the document, which resulted in the closure of Petitioner's FAP eligibility. (Exhibit A, pp. 39-40)
6. From May 2015 through August 2015, Respondent received a total of \$ [REDACTED] in FAP benefits. (Exhibit A, p. 54)
7. On February 13, 2017, MDHHS calculated that Respondent received an OI of \$ [REDACTED] from May 2015 through August 2015 due to Respondent's unreported employment income. (Exhibit A, pp. 36-50)
8. On April 13, 2018, MDHHS requested a hearing to establish that Respondent received an OI of \$ [REDACTED] in FAP benefits from May 2015 through August 2015. MDHHS also requested a hearing to establish that Respondent committed an IPV justifying imposing a 1-year disqualification period.

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 May 2015 through August 2015 due to unreported

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. 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 FAP budgets demonstrating how an OI was calculated. The OI budgets calculated Respondent's correct issuance based on previously unbudgeted employment income from Employer. The budgets used Respondent's actual pays listed on Respondent's employment history with Employer (see Exhibit A, pp. 42-44). The budgets factored Respondent's actual issuances from the OI period (see Exhibit A, p. 54). 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 \$██████ 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 Employer. Respondent presented no evidence indicating otherwise. The evidence established that Respondent did not timely report income from Employer; thus, MDHHS properly deprived Respondent of the 20% credit for reporting employment income.

Presented evidence established that Respondent's failure to report employment income resulted in an OI of \$██████ from May 2015 through August 2015. Thus, MDHHS established an OI of \$██████ against Respondent. MDHHS also alleged that Respondent's failure to report employment income 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).

It has already been established that Respondent received an overissuance of \$ [REDACTED] due to Respondent's failure to report employment income. 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. Though reporting documents advise clients to report changes within 10 days, they do not ensure that a client would not forget to report. Inclusion of boilerplate language also does not ensure that Respondent bothered read the boilerplate language to become aware of reporting requirements.

MDHHS established that Respondent received an overissuance of \$ [REDACTED] which covered a period of several months. Neither the OI amount nor the duration are so substantial that a clear and convincing intent to not report income can be inferred.

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 a total overissuance of \$██████ in FAP benefits from May 2015 through August 2015. The MDHHS request to establish an overissuance 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]
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