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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 16, 2018
MAHS Docket No.: 18-004271
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 12, 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 Julie Brda, 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.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. From March 4, 2016, through December 30, 2016, Respondent received ongoing income from an employer (hereinafter "Employer"). (Exhibit A, pp. 64-68)
2. On March 16, 2016, Respondent submitted to MDHHS an application for FAP benefits. Boilerplate language stated that Respondent's signature was certification,

subject to penalties of perjury, that all provided information was true. Respondent reported no employment income. (Exhibit A, pp. 10-38)

3. On July 22, 2016, Respondent submitted to MDHHS an application for Food Assistance Program (FAP) benefits. Boilerplate language stated that Respondent's signature was certification, subject to penalties of perjury, that all provided information was true. Respondent reported no employment income. (Exhibit A, pp. 39-63)
4. From March 2016 through December 2016, Respondent received a total of \$ [REDACTED] in FAP benefits. (Exhibit A, pp. 90-91)
5. On February 9, 2017, MDHHS calculated that Respondent received an OI of \$ [REDACTED] in FAP benefits from March 2016 through December 2016. The OI was calculated, in part, based on Respondent's allegedly unreported employment income from Employer. (Exhibit A, pp. 69-89)
6. On April 20, 2018, MDHHS requested a hearing to establish that Respondent received an OI of \$ [REDACTED] in FAP benefits from March 2016 through December 2016. MDHHS also requested a hearing to establish that Respondent committed an IPV justifying imposing a 1-year disqualification period. (Exhibit A, p. 1)
7. 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 March 2016 through December 2016 due to unbudgeted and unreported employment income. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 5-6) 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 proper monthly issuance by factoring Respondent's actual pays from Respondent's employment with Employer (Exhibit A, pp. 24-26). A regulation agent credibly testified that the OI budgets did not deviate from original budgets from the OI period other than factoring Respondent's income from Employer. The budgets factored Respondent's actual issuances from the OI period. 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. MDHHS presented multiple applications from Respondent which reported no employment income at times when Respondent was working. Respondent's failure to report employment income at times when he was employed established that Respondent did not report employment income from Employer to MDHHS; thus, MDHHS properly deprived Respondent of a budget credit for reporting employment income.

Presented evidence established that Respondent's failure to report employment income resulted in an OI of \$██████ from March 2016 through December 2016. Thus, MDHHS established an OI of \$██████ against Respondent. MDHHS also requested a hearing to establish an IPV disqualification against Respondent.

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.

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 twice reported to MDHHS in writing, subject to penalties of perjury, having no employment income at times when he was receiving ongoing employment income. Respondent's written misreporting was persuasive evidence that Respondent intentionally failed to provide information which was needed by MDHHS to issue a proper benefit amount. 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 established that Respondent received a total overissuance of \$ [REDACTED] in FAP benefits from March 2016 through December 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

Jeanenne Broadnax
MDHHS-Wayne-18-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
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M Shumaker
Policy Recoupment
C Gardocki
MAHS