



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
MI [REDACTED]

Date Mailed: July 26, 2018
MAHS Docket No.: 17-016957
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, ERM (Emergency Relief Manual) 404, and BAM (Bridges Administrative Manual) 720. After due notice, a telephone hearing was held on July 25, 2018, from Lansing, Michigan. The Department was represented by Scott Matwiejczyk, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] [REDACTED] appeared and represented herself.

ISSUES

1. Did Respondent receive an overissuance (OI) of State Emergency Relief (SER) benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?

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 May 31, 2015, Respondent applied for \$1,270.00 in SER assistance from the Department. The application asked Respondent to report her assets. Respondent did not disclose that she was expecting a \$6,337.00 Federal income tax refund. Respondent signed her application and thereby affirmed that she understood the questions on the application and that she provided true and complete information. Exhibit A, p. 9-28.
2. In the application Respondent submitted on May 31, 2015, the Department instructed Respondent to report changes which could affect her eligibility for

assistance to the Department within 10 days of the date of the change. Exhibit A, p. 28.

3. On June 4, 2015, Respondent provided the Department with a checking account bank statement for the period ending May 14, 2015, which showed she had a balance of \$84.80 in her account. Exhibit A, p. 29-30.
4. On June 8, 2015, Respondent received a \$6,337.00 Federal income tax refund deposited in her checking account. Exhibit A, p. 32.
5. Respondent did not report to the Department that she had received a \$6,337.00 Federal income tax refund.
6. On June 9, 2015, the Department approved Respondent's SER application and issued \$1,567.66 to Respondent. Exhibit A, p. 44.
7. Respondent did not have any apparent physical or mental impairment that would have limited her understanding or ability to fulfill her responsibilities to the Department.
8. The Department investigated Respondent's case and discovered that Respondent received a \$6,337.00 Federal income tax refund deposit on June 8, 2015, which she had not reported.
9. On December 20, 2017, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
10. The OIG requested recoupment of a \$1,567.66 overissuance of SER benefits issued on June 9, 2015.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Emergency Relief Manual (ERM), and Reference Tables Manual (RFT).

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

Overissuance

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (May 1, 2014), p. 1. When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1. An SER applicant must use her available cash to resolve her emergency before the Department may assist. ERM 205 (March 1, 2013), p. 1. Available cash includes all cash in a checking account in excess of \$50.00. ERM 2015, p. 1.

In this case, Respondent received an SER payment on June 9, 2015, after Respondent had received a \$6,337.00 Federal income tax refund deposit the day before. Since Respondent received a deposit of \$6,337.00, Respondent had \$6,287.00 available to resolve her emergency without the Department's assistance. Respondent's available cash exceeded the amount required to satisfy her emergency since Respondent only requested \$1,270.00 in her SER application. Thus, Respondent was ineligible for SER assistance as of the date the Department approved it. Since Respondent was ineligible for the SER assistance she received, the SER payment of \$1,567.66 was an overissuance.

Intentional Program Violation

The Department's policy in effect at the time of Respondent's alleged IPV defined an IPV as an overissuance in which the following three conditions exist: (1) The client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and (2) The client was clearly and correctly instructed regarding his or her reporting responsibilities, and (3) The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities. BAM 720 (October 1, 2014) p. 1.

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p. 1; see also 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence which is so clear, direct, weighty, and convincing that it enables a firm belief as to the truth of the allegations sought to be established. *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (citing *In re Jobes*, 108 NJ 394 (1987)).

In this case, I find that the Department has met its burden. Respondent was required to completely and truthfully answer all questions on forms and in interviews. BAM 105 (April 1, 2015), p. 8. Respondent was also required to report changes in her circumstances to the Department within 10 days of the date of the change. BAM 105, p. 10-11. The Department clearly and correctly instructed Respondent to provide true and complete information on her application and to report changes to the Department within 10 days. Respondent failed to both provide true and complete information on her

application and to report a change in her assets. Respondent knew that she was expecting a \$6,337.00 Federal income tax refund, and Respondent did not disclose it to the Department when she applied for SER assistance. Respondent then received the \$6,337.00 deposit before she received her SER, and Respondent did not report it to the Department. Respondent's actions evinced her intent to prevent a denial of her SER assistance payment since Respondent knew or should have known that disclosing and reporting her Federal income tax refund would have caused the Department to deny her application for SER assistance. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her reporting requirement.

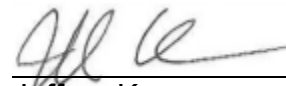
DECISION AND ORDER

The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. Respondent received an overissuance of SER benefits in the amount of \$1,567.66 that the Department is entitled to recoup.
2. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.

IT IS ORDERED THAT the Department may initiate recoupment procedures for any remaining uncollected balance of the \$1,567.66 overissuance in accordance with Department policy.

JK/nr



Jeffrey Kemm
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

Fiona Wicks
12185 James St Suite 200
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Ottawa County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

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Petitioner

OIG
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Respondent

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