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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: September 24, 2018
MAHS Docket No.: 18-003767
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 held on August 30, 2018, from Detroit, Michigan. Thomas Malik, regulation agent with the Office of Inspector General, represented MDHHS. 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 by clear and convincing evidence that Respondent committed an intentional program violation (IPV) which justifies imposing a 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 June 24, 2015, Respondent submitted to MDHHS an application for State Emergency Relief. Respondent reported that her household members included her living-together partner (hereinafter, "LTP"). (Exhibit A, pp. 12-45)

2. From October 22, 2015, through February 23, 2017, LTP received ongoing employment income. (Exhibit A, pp. 71-82)
3. On October 30, 2015, Respondent submitted to MDHHS redetermination documents for FAP benefits. Respondent reported she works for an employer (hereinafter, "Employer1") for 25 hours per week. Employment for LTP was not reported. (Exhibit A, pp. 46-53)
4. On November 3, 2015, MDHHS sent Respondent notice of an approval for FAP benefits. The notice stated that Respondent's eligibility was based on \$[REDACTED]/month in employment income. (Exhibit A, pp. 54-58)
5. From April 21, 2016, through July 13, 2017, Respondent received ongoing employment income from a new employer (hereinafter, "Employer2"). (Exhibit A, pp. 83-89)
6. On October 6, 2016, Respondent submitted a Redetermination to MDHHS. LTP was listed as a household member. Respondent did not report employment income for LTP. (Exhibit A, pp. 66-70)
7. On January 18, 2018, MDHHS calculated that Respondent received an OI of \$[REDACTED] in FAP benefits based on unreported income. (Exhibit A, pp. 90-111)
8. On April 17, 2018, MDHHS requested a hearing to establish that Respondent received an OI of \$[REDACTED] in FAP benefits from January 2016 through October 2016 and to establish an IPV disqualification of one year against Respondent. (Exhibit A, pp. 1-2)
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 an OI of \$[REDACTED] in FAP benefits based on Respondent's failure to report employment income for LTP. MDHHS made similar or identical allegations in an Intentional Program Violation

Repayment Agreement (Exhibit A, pp. 56-57) 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 an MDHHS action to identify and recover a benefit overissuance. BAM 700 (January 2016), pp. 1-2.¹

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 the alleged OI was calculated. The OI budgets calculated Respondent's allegedly proper monthly issuance by factoring LTP's actual pays from Employer. Presumably, the inclusion of LTP's and/or Respondent's employment income were the only factors changed from the original FAP budgets. The budgets factored Respondent's actual issuances from the OI period. A total OI of \$ [REDACTED] was calculated for the OI period.

The OI budgets notably 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 LTP's employment income.

MDHHS presented Respondent's Redeterminations dated October 30, 2015, and October 6, 2016. Respondent did not report any income for LTP on either document. Respondent's written misreportings were persuasive evidence that she failed to report LTP's employment income.

Given the evidence, MDHHS properly did not factor a 20% budget credit for reported employment income. All other budget calculations appeared proper and were not disputed by Respondent.

The evidence established that Respondent received an OI of \$ [REDACTED] MDHHS further alleged that Respondent's failure to report LTP's income was intentional.

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:

¹ See also 7 CFR 273.18(c)(1)(ii) for the corresponding federal regulations.

- 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. 1.²

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).

LTP's employment documents verified that LTP received ongoing employment income from October 22, 2015, through February 23, 2017. As noted in the OI analysis, Respondent submitted two reporting documents to MDHHS during LTP's period of employment and neither reported employment income for LTP. Boilerplate language on MDHHS reporting documents states that the client's signature is certification, subject to perjury, that all reported information on the document was true. The language is consistent with MDHHS policy which states that clients must completely and truthfully answer all questions on forms and in interviews (see BAM 105 (October 2016), p. 8). The evidence was not indicative that Respondent did not or could not understand the clear and correct reporting requirements.

The evidence established that Respondent failed to report, in writing, LTP's employment income. Respondent's misreporting directly led to an OI of benefits. Generally, a client's written statement which contradicts known facts resulting in an OI is clear and convincing evidence of an intent to commit an IPV; evidence was not presented to rebut the generality.

It is found MDHHS clearly and convincingly established that Respondent committed an IPV. Accordingly, MDHHS may proceed with disqualifying Respondent from benefit eligibility.

The standard disqualification period is used in all instances except when a court orders a different period. 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. BAM 725 (January 2016), p. 16.³

² See also 7 CFR 253.8 for the corresponding federal regulations.

³ See also 7 CFR 253.8 (b) for the corresponding federal regulations.

MDHHS did not allege that Respondent previously committed an IPV. Thus, a one-year disqualification period is justified.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent committed an IPV based on receipt of \$ [REDACTED] in FAP benefits from January 2016 through October 2016. The MDHHS requests to establish an overissuance and a one-year disqualification period against Respondent are **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

Petitioner

MDHHS-OIG-Hearings

DHHS

Tara Roland 82-17
MDHHS-Wayne-17-Hearings

Respondent

[REDACTED]
[REDACTED]
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