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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: August 27, 2018  
MAHS Docket No.: 18-004280  
Agency No.: ██████████  
Petitioner: OIG  
Respondent: ████████████████████

**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 August 20, 2018, from Detroit, Michigan. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled hearing time. The Michigan Department of Health and Human Services (MDHHS) was represented by Dana Daniels, 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 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 April 15, 2014, Respondent submitted to MDHHS an application for Food Assistance Program (FAP) benefits. Boilerplate language stated that

Respondent's signature was certification that an Informational Booklet was reviewed.<sup>1</sup> (Exhibit A, pp. 11-21)

2. From August 2014 through December 2014, Respondent received a total of \$█████ in FAP benefits. (Exhibit A, p. 22)
3. On September 16, 2016, MDHHS mailed Respondent a Wage Match Client Notice. (Exhibit A, pp. 23-24)
4. On September 27, 2016, MDHHS received Respondent's employment information. The information included Respondent's gross pay amounts from June 5, 2014, through December 18, 2014. (Exhibit A, pp. 24-26)
5. On February 7, 2018, MDHHS calculated that Respondent received an OI of \$█████ in FAP benefits from August 2014 through December 2014. The OI was calculated, in part, based on Respondent's allegedly unreported employment income from Employer. MDHHS calculated that Respondent's actual issuances from the OI period totaled \$█████ and Respondent's "correct" issuances totaled \$█████ (Exhibit A, pp. 27-37)
6. On April 20, 2018, MDHHS requested a hearing to establish that Respondent received an OI of \$█████ in FAP benefits from August 2014 through December 2014. MDHHS also requested a hearing to establish that Respondent committed an IPV justifying imposing a one-year disqualification period. (Exhibit A, p. 1)

### **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 \$█████ in FAP benefits from August 2014 through December 2014 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.

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<sup>1</sup> The Informational Booklet (which was not presented as an exhibit) includes language that clients are to report income changes to MDHHS within 10 days.

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.

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 budgets factored Respondent's previously unbudgeted income from Employer; Respondent's actual pays from Employer were factored. A total OI of \$████ was calculated for the OI period.

In calculating Petitioner's "correct" issuance, MDHHS 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 to MDHHS.

MDHHS alleged that Respondent's failure to report income can be inferred from the OI itself. In other words, had Respondent reported the income from Employer, MDHHS would have budgeted the income and no OI would have occurred. The MDHHS allegation overlooks the possibility that Respondent reported income but MDHHS failed to act on it; Respondent presented no evidence of such a possibility. Given MDHHS' unrebutted evidence, Respondent failed to timely report to MDHHS income from Employer. Thus, MDHHS properly deprived Respondent of the 20% credit for reporting employment income.

Given the evidence, MDHHS established that Respondent received an OI of \$████ due to Respondent's failure to timely report employment income. MDHHS further alleged that Respondent's failure to report income justified imposing an IPV disqualification.

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 253.8.

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).

MDHHS 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.

The evidence established an OI period from August 2014 through December 2014 resulting in an OI of \$ [REDACTED] in FAP benefits. Neither the OI amount nor the duration are so substantial that a clear and convincing intent to not report income can be inferred.

MDHHS established that Respondent signed an application which included boilerplate language stating that signing the application was certification of reading a section including information about reporting changes to MDHHS within 10 days. Inclusion of the boilerplate language in an application does not verify that Respondent read the language, absorbed the language, or remembered the obligation upon later receipt of employment income.

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 a written misreporting; the evidence was not persuasive in overcoming the generality.

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. 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.

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 August 2014 through December 2014. 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**

Lindsay Miller  
MDHHS-Genesee-UnionSt-Hearings

**Petitioner**

MDHHS-OIG-Hearings

**Respondent**

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

M Shumaker  
Policy Recoupment  
C Gardocki  
MAHS