



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
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Date Mailed: August 21, 2018
MAHS Docket No.: 18-004326
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 20, 2018, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by Dana Daniels, regulation agent with the Office of Inspector General. 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. From approximately January 18, 2015, through November 17, 2017, Respondent's living together partner (hereinafter, "LTP") received ongoing income from an employer (hereinafter, "Employer"). (Exhibit A, pp. 43-47)

2. On December 15, 2015, MDHHS mailed Respondent a Notice of Case Action (Exhibit A, pp. 75-78). Boilerplate language stated that clients are to report changes in income and address within 10 days.
3. On February 2, 2016, Respondent submitted to MDHHS an application for Food Assistance Program (FAP) benefits. Respondent reported a household that included LTP. Respondent reported no employment income for LTP. Boilerplate language stated that Respondent's signature was certification, subject to penalties of perjury, that all provided information was true. (Exhibit A, pp. 11-32)
4. On February 4, 2016, MDHHS mailed Respondent a Notice of Case Action informing Respondent of an approval of FAP benefits. 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. 79-85)
5. From February 2016 through January 2017, Respondent received a total of \$ [REDACTED] in FAP benefits. (Exhibit A, pp. 33-34)
6. On January 3, 2017, Respondent reported LTP's income on a Redetermination. (Exhibit A, pp. 35-42)
7. On November 22, 2017, MDHHS calculated that Respondent received \$ [REDACTED] in over-issued FAP benefits from February 2016 through January 2017 based on actual FAP issuances totaling \$ [REDACTED] and a "correct" FAP issuance totaling \$ [REDACTED] (Exhibit A, pp. 48-74)
8. On April 24, 2018, MDHHS requested a hearing to establish that Respondent received an OI of \$ [REDACTED] in FAP benefits from February 2016 through January 2017. MDHHS also requested a hearing to establish that Respondent committed an IPV justifying imposing a one-year disqualification period. (Exhibit A, p. 1)
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 from February 2016 through January 2017 due to unbudgeted and 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.

MDHHS presented FAP budgets demonstrating how the alleged OI was calculated. The OI budgets calculated Respondent's proper monthly issuance by factoring LTP's actual pays from 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 LTP's income from Employer. 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 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.

Respondent testified that she reported LTP's income on a reporting document, though she could not remember when the report happened. Respondent's testimony was consistent with a Redetermination which verified that Respondent reported LTP's income on January 3, 2017. Respondent's written reporting happened at the end of the alleged OI period and does not affect the alleged OI amount.

Respondent also testified that she called MDHHS 40 times and only received 7 return phone calls. Respondent's testimony implied that the lack of return phone calls by her specialist is indicative of neglect by MDHHS in budgeting LTP's income. Respondent's uncorroborated testimony, even if true, failed to establish that 40 return calls by MDHHS were needed. Respondent's testimony failed to specify that just one of her calls was intended to report LTP's income. Respondent's testimony was not persuasive in establishing an error by MDHHS in not budgeting LTP's income.

Respondent's application dated February 2, 2016, failed to report LTP's employment income. At the time of application, Respondent had been employed for over one year. Respondent's written misreporting was 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:

- 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.

An 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's testimony acknowledged that she signed the application which misreported LTP's income, but LTP completed the remainder of the application. Respondent also testified that she may have failed to look over the application before submitting it to MDHHS, but she did not intentionally fail to report LTP's income.

The application signed by Respondent stated 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.

Respondent reported to MDHHS in writing, subject to penalties of perjury, that LTP had no employment income at a time when he received employment income for over one year. 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; Respondent did not present sufficient evidence to rebut the generality.

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.

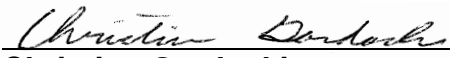
The standard disqualification period is used in all instances except when a court orders a different period. MDHHS is to apply the following disqualification periods to recipients determined to have committed an IPV: one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 725 (January 2016), p. 16.

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 February 2016 through January 2017 due to an IPV. The MDHHS requests to establish an overissuance and a one-year disqualification 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

DHHS

Lindsay Miller
MDHHS-UnionSt-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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

M Shumaker
Policy Recoupment
C Gardocki
MAHS