



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: January 4, 2017  
MAHS Docket No.: 16-011002  
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 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 December 8, 2016, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], regulation agent, with the Office of Inspector General. Respondent did not appear.

**ISSUES**

The first issue is whether MDHHS established Respondent received an overissuance (OI) of benefits.

The second issue is whether MDHHS established 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. Respondent was an ongoing recipient of Food Assistance Program (FAP) benefits from the State of Michigan.
2. Respondent began receiving employment income beginning [REDACTED], which continued through [REDACTED].

3. Respondent purposely failed to report employment income to MDHHS.
4. Respondent received a FAP benefit OI of [REDACTED] from July 2015 through December 2015.
5. On [REDACTED], MDHHS requested a hearing to establish Respondent committed an IPV and received an OI of [REDACTED] in FAP benefits for the months from July 2015 through December 2015.

### **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 requested a hearing, in part, to establish Respondent received an overissuance of benefits. MDHHS presented an Intentional Program Violation Repayment Agreement (Exhibit 1, pp. 5-6) dated [REDACTED]. The repay agreement (unsigned by Respondent) alleged Respondent received an over-issuance of [REDACTED] in FAP benefits from [REDACTED], through December 2015. The repayment agreement, along with MDHHS testimony, alleged the OI was based on Respondent's failure to timely report income.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (January 2016), p. 1. An overissuance [bold lettering removed] is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. *Id.* Recoupment [bold lettering removed] is a MDHHS action to identify and recover a benefit overissuance. *Id.*, p. 2.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2016), p. 11. Changes [in income] must be reported within 10 days of receiving the first payment reflecting the change. *Id.*

MDHHS presented a Wage Match Client Notice (Exhibit 1, pp. 10-11) along with Respondent's earning statements (Exhibit 1, pp. 12-25) from restaurant employment. Pay information from [REDACTED], to [REDACTED], were listed.

A Verification of Employment (Exhibit 1, pp. 26-27) and additional payroll details from the same restaurant employment (Exhibit 28-30) were presented. Additional pays from [REDACTED], were listed.

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, p. 44). Issuances from February 2015 through December 2015 were listed.

FAP overissuance budgets (Exhibit 1, pp. 45-51) and a corresponding Issuance Summary (Exhibit 1, p. 52) were presented. The budgets ranged from July 2015 through November 2015. The budgets factored Respondent's employment earnings as listed on presented documents. The budgets factored Respondent's employment income as unreported, thereby depriving Respondent of a 20% employment income credit. A total OI of [REDACTED] was calculated. MDHHS had valid reason to conclude Respondent's employment was unreported.

MDHHS presented Respondent's electronically-submitted application for FAP benefits (Exhibit 1, pp. 31-43) dated [REDACTED]. The application reported no employment income.

Presented evidence established Respondent reported not having employment income during a time he was known to have employment income. MDHHS established Respondent's misreporting resulted in an OI of [REDACTED] in FAP benefits. The analysis will proceed to determine if Respondent's misreporting amounted to an IPV.

The Code of Federal Regulations defines an IPV. Intentional program violations shall consist of having intentionally: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system. 7 CFR 273.16 (c).

[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).

Presented evidence sufficiently established Respondent was aware of reporting requirements. Presented evidence was also not indicative that Respondent was unable to understand reporting requirements.

Respondent's failure to report employment income on the application from July 2015 is indicative of a fraudulent intent. It is found Respondent committed an IPV.

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 testimony conceded an IPV had not previously been imposed against Respondent. Thus, MDHHS is justified in imposing a 12 month disqualification penalty against Respondent.

### **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 █████ in over-issued FAP benefits from July 2015 through November 2015. The MDHHS request to establish an overissuance and an IPV (Respondent's 1<sup>st</sup>) against Respondent is **APPROVED**.

CG/hw



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**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) 335-6088; 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**

[REDACTED]

[REDACTED]

**Petitioner**

[REDACTED]

**Respondent**

[REDACTED]