



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR



Date Mailed: January 24, 2017  
MAHS Docket No.: 16-012770  
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 January 5, 2017 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 received employment income from an employer (hereinafter "Employer #1) through July 2014.

3. Respondent began receiving employment income from a second employer (hereinafter "Employer #2") beginning August 2014 and continuing through February 2015.
4. Respondent failed to report employment income from Employer #2 to MDHHS.
5. Respondent's failure to report income was not clearly and convincingly purposeful.
6. Respondent received an OI of [REDACTED] in FAP benefits from September 2014 through February 2015.
7. 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 September 2014 through February 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 unsigned Intentional Program Violation Repayment Agreement (Exhibit 1, pp. 5-6) dated June 8, 2016. The document alleged Respondent received an over-issuance of [REDACTED] in FAP benefits from September 2014 through February 2015. The document, along with MDHHS testimony, alleged the OI was based on Respondent's failure to timely report employment income.

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

MDHHS presented documents from "TheWorkNumber" (Exhibit 1, pp. 24-26) dated [REDACTED]. The documents listed Respondent's employment information with Employer #2. A hire and start date of employment of [REDACTED], was stated. Various weekly pays were listed. Listed pay dates ranged from [REDACTED], through [REDACTED]

MDHHS presented documents concerning Respondent's employment with Employer #1 (Exhibit 1, pp. 27-32). Various pay stubs from June 2014 and July 2014 were included. MDHHS presented the documents to verify that the income was not factored within presented OI budgets.

MDHHS presented Respondent's FAP benefit issuance history from the State of Michigan (Exhibit 1, p. 10). The history listed FAP issuances to Respondent from September 2014 through February 2015.

MDHHS presented an Issuance Summary (Exhibit 1, p. 11) and corresponding FAP overissuance budgets (Exhibit 1, pp. 12-23) covering September 2014 through February 2015. The budgets factored, in part, Respondent's FAP benefit issuances as stated on presented documents. The budgets factored Respondent's earnings (as stated on Exhibit 1, p. 26) from Employer #2; no other income was factored. A total OI of [REDACTED] was calculated.

MDHHS policy categorizes overissuances into 3 different types: client error, agency error, and intentional fraud (see BAM 700). Client and Agency errors are not pursued if the estimated amount is less than \$250 per program. BAM 700, p. 9.

The above policy allows MDHHS to pursue an OI no matter which party was at fault. The OI budgets, as presented, can only be found accurate if it is found Respondent is at fault for the OI.

The budgets factored Respondent's income with Employer #2 as unreported. Factoring employment income as unreported deprives clients from a 20% employment income credit. The analysis will proceed to determine if Respondent reported employment income.

MDHHS presented Respondent's handwritten Redetermination (Exhibit 1, pp. 33-38). Respondent signed the Redetermination on [REDACTED]. Respondent listed income from Employer #1. Respondent did not list income from Employer #2.

As of the date of Redetermination, Respondent was employed with Employer #2. Presumably, Respondent was well aware that he would receive his first pay from Employer #2 on the next day.

As of Respondent's Redetermination submission date, Respondent was not technically required to report income from Employer #2. MDHHS policy gives clients 10 days from the start date of income. Respondent's first pay from Employer #2 was verified to occur one day after Respondent submitted the Redetermination. Though Respondent may not have been technically required to report the income on the date of Redetermination, a failure to list income which Respondent knew he'd receive the following day is indicative of a failure to report income after the reporting was mandatory.

It is found that Respondent failed to report employment income. Thus, MDHHS properly deprived Respondent of the 20% employment income credit.

Presented evidence sufficiently verified Respondent's lack of reporting caused an OI of [REDACTED] during the alleged OI period. The analysis will proceed to determine if Respondent's non-reporting 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).

DHS regulations list the requirements for an IPV. 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 (1/2011), 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).

MDHHS presented Respondent's electronically submitted application (Exhibit 1, pp. 41-52) signed and dated by Respondent on September 1, 2012. The application stated Respondent's signature was certification of an understanding of a responsibility to report changes to MDHHS within 10 days.

MDHHS alleged Respondent failed to report employment information to MDHHS for the purpose of receiving FAP benefits to which Respondent was not entitled; this was established. MDHHS also contended the failure was purposeful and intentional.

In the OI analysis, it was found that Respondent's failure to report employment income (though not technically required to do so) on a Redetermination was indicative that

Respondent never reported the income to MDHHS. The failure to report income does not equate to an intentional failure to report.

It is notable that Respondent's failure to report employment information could reasonably be explained by Respondent forgetting to report information. Though MDHHS demonstrated Respondent was advised of reporting requirements at application it does not ensure that a client would not accidentally forget. Respondent's reporting on another document is more indicative of a fraudulent intent.

MDHHS presented a Semi-Annual Contact Report (Exhibit 1, pp. 39-40). Respondent's signature was dated [REDACTED], but was likely misdated as the document was not created until [REDACTED]; presumably Respondent signed the form on [REDACTED]. Respondent checked that his earnings had not been changed by more than [REDACTED] from a monthly income of [REDACTED].

Respondent reported that his monthly income was no more than [REDACTED] during a time his prior 2 months of income averaged nearly [REDACTED]. The discrepancy appears to be large enough to infer that Respondent's misstatement concerning monthly income was purposeful.

Presented income information from Employer #2 verified Respondent received wages of [REDACTED] in November 2014, [REDACTED] in December 2014, and [REDACTED] in January 2015 (over 5 pays). The discrepancy between Respondent's actual earnings and the [REDACTED] income threshold was significant enough to be indicative of an IPV.

Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015), p. 8. Generally a written misreporting is persuasive evidence that the client who misreported committed an IPV. The present case justified an exception to the general rule.

The Semi-Annual Contact Report appeared to be signed by Respondent on [REDACTED]. A Semi-Annual Contact Report completed in February 2015 likely affected Respondent's benefit eligibility beginning March 2015. March 2015 is outside of the alleged OI period. Thus, MDHHS cannot claim that Respondent's written misreporting contributed to an OI.

MDHHS did not present written statements from Respondent which contradicted known facts resulting in a MDHHS policy violation and OI of FAP benefits. Generally, MDHHS will have difficulty in establishing a clear and convincing purposeful failure to report under such circumstances. Presented evidence was indicative that Respondent's failure to report was purposeful, but not clearly and convincingly so. It is found MDHHS failed to establish Respondent committed an IPV.

**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 September 2014 through February 2015. The MDHHS request to establish an overissuance is **APPROVED**.

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 related to an OI of FAP benefits due to unreported income for the months from September 2014 through February 2015. The MDHHS request to establish Respondent committed an IPV is **DENIED**.



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]