



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: January 26, 2017  
MAHS Docket No.: [REDACTED]  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]  
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 [REDACTED], 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. On [REDACTED] Respondent began to receive employment income.

3. On [REDACTED], Respondent failed to list employment income on an application submitted to MDHHS.
4. Factoring Respondent's unreported employment income caused Respondent to receive an OI of [REDACTED] in FAP benefits from [REDACTED]
5. Respondent's failure to report employment income was intentional.
6. On [REDACTED], MDHHS requested a hearing to establish Respondent committed an IPV and received an OI of [REDACTED] in FAP benefits from [REDACTED].

### 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 [REDACTED]. The unsigned agreement alleged Respondent received an over-issuance of [REDACTED] in FAP benefits from [REDACTED]. The repayment agreement, along with MDHHS testimony, alleged the OI was based on Respondent's failure to timely report employment 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 must be reported within 10 days of receiving the first payment reflecting the change. *Id.*

MDHHS presented Respondent's electronically-submitted FAP benefit application (Exhibit 1, pp. 10-32). Respondent's signature was dated [REDACTED]. Application statements "Total amount of income your household will get this month", "Will anyone in your household receive income this month?", and "Gross amount of the income

expected?" indicated a blank response. Respondent's application reported that she recently lost her source of income on [REDACTED].

MDHHS specialist case comments (Exhibit 1, p. 33) were presented. Respondent's specialist documented on [REDACTED] that Respondent was interviewed and that she reported no income

MDHHS presented TheWorkNumber.com documents (Exhibit 1, pp. 34-36). Various weekly pays for Respondent were listed from [REDACTED], through [REDACTED]. In [REDACTED], pay dates were missing for [REDACTED]. Respondent's employment appeared to be through a temporary staffing agency.

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, pp. 37-38). A FAP issuance of [REDACTED] for [REDACTED] was listed. Issuances of [REDACTED] from [REDACTED] through [REDACTED] were listed.

An Issuance Summary (Exhibit 1, p. 39) and OI budgets (Exhibit 1, pp. 40-63) for the benefit months from [REDACTED] were presented. The OI budgets factored Respondent's employment income from TheWorkNumber.com. The income was budgeted as "unreported" thereby depriving Respondent of a 20% employment income credit. Presented budgets calculated a FAP benefit OI [REDACTED]

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 [REDACTED] per program. BAM 700, p. 9.

MDHHS alleged Respondent failed to timely report the employment to MDHHS. The allegation was based, in part, on the absence of income budgeted from Employer as part of Respondent's original FAP benefit issuances during the alleged OI period. The allegation was also consistent with Respondent's FAP benefit application responses.

It is found Respondent failed to timely report employment income concerning employment income. It is further found MDHHS established Respondent received a FAP benefit OI of [REDACTED]. The analysis will proceed to determine if the OI was caused by an IPV by Respondent.

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).

Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015), p. 8. Respondent's written statements were indicative of a lack of truthfulness.

As of Respondent's application submission date (July 20, 2015), Respondent had received 3 pays from her temp agency employment. Despite ongoing income, Respondent failed to report any income on her application. Respondent's intent appeared to be to purposely hide her employment income from MDHHS.

Respondent's unreported income appeared to be through a temporary staffing agency. Income through a temp agency employer can be erratic. It is known Respondent did not receive income for a pay date of [REDACTED]. The date is close enough to Respondent's application date that a consideration of whether Respondent had reason to believe that her income had stopped when she submitted an application to MDHHS.

It is known Respondent reported that she lost an unspecified income on [REDACTED]. It is also known that Respondent started her temp agency job after [REDACTED] and received multiple pays from her employment as of her application submission date. Thus, Respondent's date of reportedly last income was surely nothing to do with her temp agency employment income. It can also be concluded that Respondent's last date of income receipt was inaccurate. This consideration is consistent of an intent to purposely not report temp agency employment income.

MDHHS established that Respondent was aware of her reporting requirements. There was no indication Respondent failed to understand reporting requirements.

Generally, a written misreporting by a client is persuasive proof that the client committed an IPV. Presented evidence does not suggest deviation from the general rule. It is found MDHHS clearly and convincingly established Respondent committed an IPV by failing to report employment income.

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 did not present evidence of Respondent's IPV history. Due to the absence of evidence presented by MDHHS, whether respondent previously committed an IPV will be considered in the most favorable light for Respondent. The most favorable light assumes Respondent had no previous IPV's. Thus, a 1 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 received [REDACTED] in over-issued FAP benefits from [REDACTED]. The MDHHS request to establish an overissuance and an IPV 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]  
[REDACTED]

[REDACTED]

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED]