



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: September 8, 2017
MAHS Docket No.: 17-007866
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION FOR
INTENTIONAL PROGRAM VIOLATION**

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 September 6, 2017, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED] [REDACTED] Regulation Agent, with the Office of Inspector General. Respondent appeared and was unrepresented.

ISSUE

The 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. From [REDACTED], Respondent received various weekly employment pays from an employer (hereinafter "Employer"), except for the pay date of [REDACTED].

3. On [REDACTED], Respondent applied for FAP benefits and did not report employment income to MDHHS.
4. Respondent did not report employment income to MDHHS before [REDACTED].
5. Respondent's failure to timely report income was not clearly and convincingly purposeful.
6. On [REDACTED], MDHHS requested a hearing to establish Respondent committed an IPV related to an OI of \$ [REDACTED] in FAP benefits for the months 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 to establish that Respondent committed an IPV. Typically, such MDHHS requests are accompanied by a request to establish an overissuance of benefits. MDHHS testimony indicated that establishment of an OI was not needed because the alleged OI was already recouped in its entirety.

MDHHS presented an unsigned Request for Waiver of Disqualification Hearing (Exhibit 1, pp. 7-8) dated [REDACTED]. The document alleged Respondent committed 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).

MDHHS presented an Intentional Program Violation Repayment Agreement (Exhibit 6) dated [REDACTED]. The document and hearing testimony alleged that Respondent committed an IPV by failing to report employment income. MDHHS contended that Respondent's failure was verifiable by reporting documents.

MDHHS presented Respondent's FAP benefit application (Exhibit 1, pp. 10-37). Respondent's electronic signature was dated [REDACTED]. The application reported no employment income.

MDHHS presented various documented comments (Exhibit 1, p. 45) concerning Respondent's case. On [REDACTED], Respondent's specialist noted that Respondent reported no income; this was presumably done following a FAP interview with Respondent.

MDHHS presented TheWorkNumber.com documents (Exhibit 1, pp. 46-49). The documents listed Respondent's pay history with Employer. Various weekly gross pay dates from [REDACTED], were listed. Listed pay dates included [REDACTED] and [REDACTED]; a pay date for [REDACTED], was not listed.

MDHHS presented an Issuance Summary (Exhibit 1, p. 50) and corresponding FAP overissuance budgets (Exhibit 1, pp. 51-66) from June 2015 through [REDACTED]. The budgets factored, in part, Respondent's FAP benefit issuances as stated on presented documents (see Exhibit 1, 67-68). The budgets also factored Respondent's earnings as stated on presented employment documentation. A total OI of \$ [REDACTED] was calculated.

MDHHS alleged that Respondent's application dated [REDACTED], was evidence of fraud because it misreported income. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015), p. 8.

Respondent testified that he applied for FAP benefits at a time he was not working. Respondent's testimony was technically consistent with TheWorkNumber.com documentation which tended to verify that Respondent would have received a pay on [REDACTED], but did not

It was not disputed that Employer was a temporary staffing agency. Thus, it is reasonably possible that one of Respondent's job assignments ended leaving Respondent without knowledge of when he would work next. Such a circumstance would justify a reporting of no employment income. Though Respondent appeared for the hearing, his testimony was not insightful concerning his work circumstances other than his statement that he was not working when he applied for FAP benefits.

Based on presented evidence, it is found that Respondent did not misreport employment income to MDHHS. MDHHS alternatively alleged that Respondent committed an IPV by failing to report employment income.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (May 2012), p. 7. Changes [in income] must be reported within 10 days of receiving the first payment reflecting the change. *Id.*

MDHHS presented a Notice of Case Action (Exhibit 1, pp. 39-42) dated [REDACTED]. The notice informed Respondent of an approval of FAP benefits beginning [REDACTED]. The notice also included a budget summary (Exhibit 1, p. 40) which listed \$ [REDACTED] income as factored in the FAP eligibility calculation. Boilerplate language (see Exhibit 1, p. 42) informed clients to report changes within 10 days for circumstance changes that affected FAP eligibility; a change in income was listed as a specific example of a circumstance that required reporting.

MDHHS presented a Change Report (Exhibit 1, pp. 43-44). The document is known to be mailed with Notices of Case Action. The document again informed Petitioner of the responsibility to report changes within 10 days while listing various sections for changes to be reported; household income was among the document's sections.

During the hearing, Respondent was asked why he did not report his employment to MDHHS once he returned to employment shortly after applying for FAP benefits. Respondent's answered, "I don't know."

Given presented evidence, it is very possible that Respondent purposely failed to report employment income to MDHHS for the purpose of receiving more FAP benefits than he was entitled to receive. Such actions would amount to an IPV. Though Respondent may have had a fraudulent motive, other plausible explanations exist.

Respondent's failure to timely report employment income to MDHHS could be explained by Respondent simply forgetting to report. Though MDHHS established that Respondent should have been aware of a requirement to report income within 10 days, it does not ensure that a client would not accidentally forget. It is also theoretically

possible that Respondent was unaware of the requirement, though Respondent expressed no indication that such a scenario occurred.

Generally, MDHHS will have difficulty in establishing a clear and convincing purposeful failure to report information when there is not verification of misreporting. Though evidence was presented to justify a finding that Respondent committed an IPV, a clear and convincing standard requires more evidence than assumptions of intent.

It is found MDHHS failed to clearly and convincingly establish that Respondent committed an IPV. Accordingly, it is found MDHHS may not proceed with imposing an IPV 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 related to an OI of FAP benefits due to unreported income for the months from [REDACTED]. The MDHHS request to establish Respondent committed an IPV is **DENIED**.

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) 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]

Petitioner

[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]