



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 13, 2017
MAHS Docket No.: 17-009425
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [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 11, 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.

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. Respondent's household included a living-together partner (LTP).
3. From [REDACTED], Respondent's LTP received income from an employer (hereinafter "Employer").

4. Respondent's failure to timely report LTP's employment income was not clearly and convincingly purposeful.
5. On [REDACTED], MDHHS requested a hearing to establish Respondent committed an IPV related to unreported employment income.

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 a corresponding OI was already established.

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 1, pp. 6-7) dated [REDACTED]. The document and hearing testimony alleged that Respondent committed an IPV by failing to report Respondent's LTP's 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 Respondent's FAP benefit application (Exhibit 1, pp. 12-30). Respondent's handwritten signature was undated though a witness' signature was dated [REDACTED]. Boilerplate language stated that Respondent's signature was certification that the Informational Booklet was received and reviewed; the Informational Booklet is known to inform clients of the requirement to report changes within 10 days of starting income. Respondent reported that her household included her LTP. MDHHS did not allege that Respondent's application misreported information.

MDHHS presented Respondent's Health Care Coverage Supplemental Questionnaire (Exhibit 1, pp. 31-34). Respondent's handwritten signature was dated [REDACTED]. Respondent reported that her household included her LTP. MDHHS did not allege that the document contained misreported information.

MDHHS presented a Notice of Case Action (Exhibit 1, pp. 35-39) dated [REDACTED]. The notice informed Respondent of an approval of FAP benefits. A budget summary indicated that no employment income was factored. Boilerplate language indicated that Respondent was to report various changes to MDHHS within 10 days (see Exhibit 1, p. 38); changes in employment and income were among the examples of changes requiring reporting. MDHHS also presented a Change Report (Exhibit 1, pp. 39-40) dated [REDACTED], also informing Respondent of reporting responsibilities.

MDHHS presented a Notice of Case Action (Exhibit 1, pp. 41-45) dated [REDACTED]. The notice informed Respondent of an approval of FAP benefits. A budget summary indicated that no employment income was factored in Respondent's benefit approval. Boilerplate language indicated that Respondent was to report various changes to MDHHS within 10 days (see Exhibit 1, p. 27); changes in employment and income were among the examples of changes requiring reporting.

MDHHS presented TheWorkNumber.com documents (Exhibit 1, pp. 49-51). The documents listed Respondent's LTP's pay history with Employer. Various weekly gross pay dates from [REDACTED], were listed.

A Case Worker Message Form (Exhibit 1, p. 52) dated [REDACTED], was presented. Respondent wrote that she and her LTP stopped living together and that he needs to be removed from her case.

MDHHS presented Respondent's Electronic Case File (Exhibit 1, p. 64). The file listed no documents from Respondent during her LTP's period of employment. MDHHS contended that the absence of such documents tends to verify that Respondent did not submit proof of her LTP's employment income to MDHHS during the OI period.

MDHHS presented various documents that were relevant to establishing an OI. The documents included Respondent's employment history with an employer (Exhibit 1, pp. 46-48), an Issuance Summary (Exhibit 1, p. 54), FAP-OI budgets (Exhibit 1, pp. 55-60), FAP-issuance history (Exhibit 1, p. 61), and expenditure history (Exhibit 1, pp. 65-66). The documents were not relevant to establishment of an IPV.

Presented evidence was fairly convincing that Respondent failed to timely report her LTP's employment income to MDHHS. A failure to timely report is not necessarily caused by a fraudulent intent.

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.


MDHHS did not present verification of a written misreporting by Respondent. Generally, MDHHS will have difficulty in establishing a clear and convincing purposeful failure to report information when there is not verification of misreporting. Presented evidence was not persuasive in overcoming the general rule.

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] [REDACTED]. The MDHHS request to establish Respondent committed an IPV is **DENIED**.

CG/jaf



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]
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