



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 29, 2018
MAHS Docket No.: 17-013547
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, 42 CFR 431.230(b), 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 March 28, 2018, 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 appeared and was not represented.

ISSUES

1. Did the Department establish, by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from receiving benefits for one year?

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 November 7, 2015, Respondent submitted to MDHHS an electronic application requesting FAP benefits (Exhibit A, pp. 12-26). Boilerplate application language advised applicants to report changes within 10 days (see Exhibit A, p.

- 24). Listed examples of changes to be reported included starting of employment income (see *Id.*).
3. On April 1, 2016, or April 4, 2016, Respondent's specialist documented a telephone call with Respondent (see Exhibit A, p. 27 and p. 52) in which Respondent reported a stoppage in employment income from November 2015. The specialist informed Respondent that he failed to previously report receipt of unemployment benefits. Respondent told his specialist that he did not know of the need to report changes.
 4. Beginning April 2, 2016, Respondent began receiving employment income from his employer (see Exhibit A, p. 49).
 5. On April 4, 2016, MDHHS mailed Respondent a Notice of Case Action (Exhibit A, pp. 28-31). The notice informed Respondent of updated FAP eligibility of \$█/month beginning May 2016. Respondent's eligibility was based, in part, on \$█ in employment income and \$█ in unearned income. Respondent's specialist commented, "... [A]s we discussed on the phone, you need to report changes within 10 days." (see Exhibit A, p. 28). Boilerplate language from the end of the notice also included a section informing clients to report changes within 10 days (see Exhibit A, p. 31).
 6. Over the course of June 2016 through October 2016, Respondent received an OI of \$█ due to Respondent's failure to report employment income (see Exhibit A, pp. 54-64).
 7. On November 21, 2016, Respondent submitted to MDHHS an application for FAP benefits (Exhibit A, pp. 32-46). Respondent reported a stoppage in employment income beginning November 2016.
 8. On August 31, 2017, MDHHS mailed Respondent an Intentional Program Violation Repayment Agreement (Exhibit 1, pp. 6-7). The document alleged Respondent committed an IPV based on unreported earnings resulting in an OI of \$█ for the benefit months from June 2016 through October 2016.
 9. On August 31, 2017, MDHHS requested a hearing to establish Respondent committed an IPV based on an OI of \$█ in FAP benefits received by Respondent from June 2016 through October 2016.
 10. As of the date of hearing, Respondent had no previous IPV disqualifications.

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 which resulted in an OI of benefits. A regulation agent testified that the OI was previously established and that establishment of an OI by administrative hearing was not necessary. Thus, the proceeding analysis will evaluate only whether the previously established OI was caused by 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 contended that Respondent willfully and/or intentionally failed to report employment information which resulted in an OI of \$████ in FAP benefits over the period from June 2016 through October 2016. Respondent did not dispute that he received

§ in FAP benefits as a result of his failure to report a restarting of employment income. Respondent only disputed whether his failure to report was intentional.

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.*

Respondent's payroll records listed Respondent receiving a pay check on April 2, 2016 (see Exhibit A, p. 49) after not receiving pays since November 2015. The evidence established that Respondent received restarted employment income on April 2, 2016.

During the hearing, Respondent was asked why he did not report employment income to MDHHS. In response, Respondent testified that he was "too busy" and "forgot". It is appreciated that life's demands can sometimes result in innocent forgetfulness. The evidence was not indicative that Respondent innocently forgot to report restarted employment income.

If Respondent innocently forgot to report employment income he would have had to forget from April 4, 2016, through October 2016. Generally, not reporting income for a period of nearly seven months is consistent with willfully not reporting.

MDHHS documented a phone call with Respondent whereby Respondent was specifically reminded to report changes in employment. One MDHHS record documented the phone call occurred on April 1, 2016. If MDHHS' phone call to Respondent occurred on April 1, 2016, Respondent's claim of innocent forgetfulness requires accepting that he forgot to report receipt of his first pay check to MDHHS only one day after being reminded. If MDHHS' phone call occurred on April 4, 2016, Respondent's claim would require accepting that he forgot to inform MDHHS that he received a pay check two days earlier. In either case, Respondent's failure to report employment income is not consistent with innocent forgetting. For good measure, MDHHS reminded Respondent on a Notice of Case Action dated April 4, 2017, to report changes in income.

The evidence established by a clear and convincing standard that Respondent willfully failed to report employment income to MDHHS which resulted in a benefit overissuance. Thus, MDHHS established that 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 did not allege Respondent previously committed an IPV. Thus, a one-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 committed an IPV. The MDHHS request to establish a one-year disqualification against Respondent is **APPROVED**.

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]
[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]
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