



indicated listed that Respondent's eligibility was based on zero employment income and zero unearned income. (Exhibit A, pp. 28-31) MDHHS also mailed Respondent a Change Report which stated that changes would have to be reported to MDHHS within 10 days. (Exhibit A, pp. 32-33)

4. On [REDACTED] [REDACTED] 2015, Spouse began receiving biweekly unemployment income. (Exhibit A, pp. 37-40)
5. On an unspecified date, MDHHS calculated that Respondent received an OI of \$[REDACTED] in FAP benefits from March 2015 through June 2015 based on unreported employment and unemployment income. (Exhibit A, pp. 53-64)
6. On September 26, 2017, MDHHS requested a hearing to establish a one-year disqualification against Respondent for an IPV resulting in an OI of benefits from March 2015 through June 2015.
7. 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' Hearing Summary and testimony alleged that Respondent committed an IPV related to an overissuance of FAP benefits. Specifically, MDHHS alleged that Respondent failed to report employment and unemployment income.

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).

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (January 2015), p. 7. Changes [in income] must be reported within 10 days of receiving the first payment reflecting the change. *Id.*

In response to the allegation that she failed to report employment income, Respondent testified that she left a voicemail for her specialist within the first week after she began working. Respondent also testified that she left three other voicemails for her specialist also reporting employment income. Respondent also testified that she was not aware of her husband's unemployment income because he was a drug user (implying that he did not tell her about the unemployment income, so he could instead use the money for personal drug use). Respondent's testimony was not verified but it was reasonably plausible.

MDHHS contended that Respondent's failure to report income was consistent with Respondent's specialist's notes. MDHHS testimony indicated that Respondent was interviewed on [REDACTED] 2014, by a specialist. MDHHS further stated that Respondent's specialist's notes did not document any reporting of income. MDHHS did not present the notes as an exhibit; thus, no context can be given to what was documented. Even if the specialist's notes (or lack of them) convincingly established that Respondent denied having income at the time of interview, Respondent's denial would have been technically accurate as she had not received any employment income at the time of interview

MDHHS contended that Respondent's fraudulent intent can be inferred from Respondent's Electronic Benefit Transfer (EBT) history. MDHHS presented Respondent's EBT history which verified that Respondent used her EBT card on dates when Respondent also received employment income. Respondent's contention requires accepting that a client would think to report employment income to MDHHS on dates

that client received income and used an EBT card. The premise of MDHHS' contention is questionable; even if it was not, the evidence is more appropriate for a case when a client claims he or she forgot to report income. Respondent's EBT history is not deemed to be of significant probative value because Respondent claimed she reported employment income to MDHHS.

Consideration was given to whether an IPV could be inferred from the mere issuance of an OI. Presented OI budgets established that Respondent received \$[REDACTED] in over-issued FAP benefits over a four-month period. The amount of OI and the duration of the OI period are reasonably consistent with a client's lack of reporting but also reasonably consistent with reporting income to MDHHS that was not processed by a specialist.

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 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 that 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 March 2015 through June 2015. The MDHHS request to establish an IPV disqualification against Respondent is **DENIED**.

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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

**Petitioner**

MDHHS-OIG-Hearings

**DHHS**

[REDACTED]  
MDHHS-Kalkaska-Hearings

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

[REDACTED]  
Policy Recoupment  
C Gardocki  
MAHS