



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
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[REDACTED] MI [REDACTED]

Date Mailed: May 23, 2018  
MAHS Docket No.: 17-015168  
Agency No.: [REDACTED]  
Petitioner: OIG  
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, 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 scheduled for May 21, 2018, from Detroit, Michigan. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled time. The Michigan Department of Health and Human Services (MDHHS) was represented by Ian Gill, regulation agent, with the Office of Inspector General. Respondent did not appear for the hearing.

**ISSUE**

The issue is whether MDHHS established that Respondent committed an intentional program violation (IPV) which justifies imposing an IPV disqualification against Respondent.

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On February 18, 2015, Respondent submitted an electronic application to MDHHS requesting FAP benefits. Boilerplate language from the application informs clients to report any changes (including income) within 10 days. (Exhibit A, pp. 11-18)

2. From March 4, 2015, to December 24, 2015, Respondent received ongoing employment income from an employer (hereinafter "Employer"). (Exhibit A, pp. 20-24)
3. From May 2015 to December 2015, Respondent received ongoing FAP benefits totaling \$1,552. Respondent's FAP issuances did not factor any employment income for Respondent. (Exhibit A, p. 25)
4. On approximately nine different days from May 2015 through December 2015, Respondent used FAP benefits and received employment income. (Exhibit A, pp. 20-24 and 43-48)
5. On January 15, 2016, as part of Respondent's redetermination process, MDHHS discovered that Respondent was employed. (Exhibit A, pp. 19-20)
6. On an unspecified date, MDHHS established an overissuance (OI) of \$ [REDACTED] from May 2015 through December 2015 against Respondent for unreported employment income. (Exhibit A, pp. 25-42)
7. On October 19, 2017, MDHHS requested a hearing to impose a disqualification of one year against Respondent due to her failure to report employment income.
8. As of the hearing date, Respondent has no history of IPV disqualifications. (Exhibit A, p. 50)

### **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 did not seek to establish an OI as one was previously established. The only issue to be decided was whether an IPV by Respondent caused the OI of FAP benefits. MDHHS' Hearing Summary and testimony alleged that Respondent committed an IPV by failing to report employment income. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 5-6) dated October 19, 2017, sent to Respondent as part of MDHHS' prehearing procedures.

[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.*

As noted above, an OI was already established against Respondent. Establishment of the OI is relevant for two reasons. First, MDHHS need not again establish an OI for purposes of establishing that Respondent committed an IPV. Secondly, when the established OI was based on Respondent's failure to report employment income, MDHHS is closer to proving that Respondent intentionally failed to report employment income. OIs can be caused by a client's error or MDHHS' error. Notably, presented OI budgets did not factor a budget credit for reporting employment income. Thus, it can be inferred that the already established OI was caused by Client's failure to report employment income. For an IPV against Respondent, MDHHS must establish that Respondent's failure to report employment income was intentional.

Boilerplate language from Respondent's application for FAP benefits verified that Respondent should have been aware of the need to report income changes to MDHHS. The evidence was not indicative that Respondent did not or could not understand the clear and correct reporting requirements.

MDHHS presented a list of Respondent's pay dates from Employer as well as Respondent's FAP benefit expenditure history. Approximately nine times during the overissuance period, Respondent spent FAP benefits and received employment income on the same date. MDHHS contended that the proximity of getting paid and using FAP benefits renders it more likely that Respondent intentionally failed to report employment income to MDHHS.

Respondent received FAP benefits for at least 8 months without any employment income being budgeted. The period is sufficiently lengthy that Respondent unlikely forgot to report employment income to MDHHS. An unintentional failure to report employment income is also unlikely when considering that Respondent began receiving employment income within 30 days after applying for FAP benefits because MDHHS' reporting requirements from Respondent's application should have been reasonably fresh in Respondent's mind.

Respondent's length of overissuance, close proximity between application and employment income, and multiple days where Respondent spent FAP benefits and received employment income was sufficient evidence that Respondent intentionally failed to report employment income to MDHHS.

MDHHS testimony credibly indicated that Respondent had no impairment which would impede her ability to understand or fulfill her reporting responsibilities. Respondent did not appear for the hearing to assert otherwise.

Based on the evidence, MDHHS established all requirements of an IPV due to Respondent's failure to report employment income. MDHHS contended that a disqualification against Respondent is justified.


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 appropriate.

### **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 justifying a one-year disqualification period. The MDHHS request to establish an IPV disqualification against Respondent is **APPROVED**.

CG/

  
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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) 763-0155; 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**

Sheila Crittenden  
MDHHS-Wexford-Hearings

**Respondent**

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