



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: May 10, 2018
MAHS Docket No.: 17-016916
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 held on April 30, 2018, from Detroit, Michigan. The hearing was held at least 30 minutes from the scheduled hearing time. The Michigan Department of Health and Human Services (MDHHS) was represented by Meghan Kerr, 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) justifying an imposition of an IPV disqualification.

FINDINGS OF FACT

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

1. From March 23, 2012, through May 30, 2013, Respondent received employment income from an employer (hereinafter "Employer1"). (Exhibit A, pp. 38-42.)
2. On October 8, 2012, Respondent submitted an application for FAP benefits to MDHHS. Respondent's application reported no employment income in her household. (Exhibit A, pp. 13-29.)

3. On October 16, 2012, MDHHS mailed Respondent a Notice of Case Action. The notice informed Respondent of FAP benefits from October 8, 2012, based on zero employment income. Boilerplate language on the notice and a Change Report mailed with the notice informed Respondent to report changes within 10 days. (Exhibit A, pp. 30-37.)
4. Respondent continued receiving FAP benefits from October 2012 through May 2013. FAP issuances to Respondent for the time period totaled \$1,548. (Exhibit A, p. 43.)
5. On April 1, 2014, Respondent reapplied for FAP benefits. Boilerplate language from the application informed Respondent to report changes within 10 days. (Exhibit A, pp. 63-73.)
6. On April 15, 2014, MDHHS mailed Respondent a Notice of Case Action approving Respondent for FAP benefits from April 1, 2014. Boilerplate language on the notice and a Change Report mailed with the notice informed Respondent to report changes within 10 days. (Exhibit A, pp. 74-81.)
7. From June 30, 2014, through June 3, 2015, Respondent received employment income from an employer (hereinafter "Employer2"). (Exhibit A, pp. 105-110.)
8. On November 3, 2014, Respondent submitted to MDHHS a Redetermination for the purpose of continuing FAP eligibility. Respondent reported having no employment income in the household. (Exhibit A, pp. 82-87.)
9. On January 17, 2015, Respondent submitted to MDHHS an application for FAP benefits. Respondent reported no employment income in Respondent's household. (Exhibit A, pp. 88-98.)
10. On January 21, 2015, MDHHS mailed Respondent a Notice of Case Action. The notice informed Respondent of FAP eligibility from January 20, 2015, based on zero employment income. Boilerplate language on the notice and a Change Report mailed with the notice informed Respondent to report changes within 10 days. (Exhibit A, pp. 99-104.)
11. On an unspecified date, MDHHS calculated that Respondent received an OI of \$1,472 in FAP benefits from October 2012 through May 2013 based on Respondent's unreported employment income from Employer1. (Exhibit A, pp. 44-62.)
12. On an unspecified date, MDHHS calculated that Respondent received an OI of \$1,703 in FAP benefits from August 2014 through June 2015 based on Respondent's unreported employment income from Employer2. (Exhibit A, pp. 113-135.)

13. On December 13, 2017, MDHHS requested a hearing to establish that Respondent received an OI of \$1,472 in FAP benefits from March 2012 through May 2013 and \$1,703 in FAP benefits from May 2014 through June 2015. MDHHS also requested a hearing to establish that Respondent's OIs were caused by an IPV which justified imposing a one-year disqualification.
14. During the hearing, MDHHS withdrew their request to establish an OI of FAP benefits for the reason that an OI was previously established.
15. As of the date of hearing, Respondent had no previous IPV disqualifications.
16. Respondent was clearly and correctly instructed of reporting requirements.
17. During all relevant times, Respondent had no apparent impairment to understanding reporting requirements.

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. The Department (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, in part, to establish an OI of FAP benefits. MDHHS' Hearing Summary alleged that Respondent received an OI totaling \$3,175 in FAP benefits based on unbudgeted employment income. During the hearing, MDHHS withdrew their request to establish an OI for the reason that an OI was previously established. MDHHS' hearing request will be dismissed concerning the OI claim based on their withdrawal.

MDHHS did not withdraw their contention that Respondent committed an IPV in causing the OI of benefits. Specifically, MDHHS alleged that Respondent purposely failed to report employment income which led to an OI of FAP benefits. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 6-7) dated December 13, 2017, sent to Respondent as part of MDHHS' prehearing procedures.

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 Respondent's application for FAP benefits dated October 8, 2012. Respondent's application reported no employment income in her household. (Exhibit A, pp. 13-29.)

MDHHS presented a Notice of Case Action dated October 16, 2012. The notice informed Respondent of an approval of FAP benefits beginning October 8, 2012, based on \$0 employment income. Boilerplate language on the notice and a Change Report (which was mailed with the notice) informed Respondent to report changes within 10 days. (Exhibit A, pp. 30-37.)

MDHHS presented various documents of Respondent's employment with Employer1. The documents listed various gross payments to Respondent from March 23, 2012, through May 30, 2013. (Exhibit A, pp. 38-42.)

MDHHS presented Respondent's FAP issuance history from October 2012 through May 2013. Various monthly FAP issuances totaling \$1,548 were listed. (Exhibit A, p. 43.)

MDHHS presented FAP-OI budgets and a corresponding Issuance Summary from October 2012 through May 2013. The budgets reflected how MDHHS calculated an OI of \$1,472. The budgets factored Respondent's FAP issuances from presented

documentation as well as Respondent's listed payments from Employer1. (Exhibit A, pp. 44-62.)

MDHHS presented Respondent's application for FAP benefits. Respondent's electronic signature was dated January 17, 2015. Respondent reported having no employment income in the household. (Exhibit A, pp. 88-98.)

MDHHS presented a Notice of Case Action dated January 21, 2015. The notice informed Respondent of FAP benefits from January 20, 2015, based on \$0 employment income. Boilerplate language on the notice and a Change Report (which was mailed with the notice) informed Respondent to report changes within 10 days. (Exhibit A, pp. 99-104.)

MDHHS presented Respondent's FAP issuance history from August 2014 through June 2015. FAP issuances to Respondents totaled \$2,005. (Exhibit A, pp. 111-112.)

Respondent presented FAP-OI budgets and a corresponding Issuance Summary from August 2014 through June 2015. The budgets reflected how MDHHS calculated an OI of \$1,703. The budgets factored Respondent's FAP issuances from presented documentation as well as Respondent's listed payments from Employer2. (Exhibit A, pp. 113-135.)

The evidence established that Respondent received an OI of FAP benefits based on unbudgeted employment income. The evidence further established that Respondent submitted three different documents to MDHHS which reported zero employment income at times when Respondent was receiving employment income. Generally, a client's written statement which contradicts established facts and results in an OI is clear and convincing evidence of an intent to misreport for the purpose of obtaining an OI of benefits. Respondent did not appear for the hearing to present any evidence that the misreporting was not intentional.

Boilerplate language on MDHHS applications state that the client's signature is certification, subject to perjury, that all reported information on the document was true. The language is consistent with MDHHS policy which states that clients must completely and truthfully answer all questions on forms and in interviews (see BAM 105 (October 2016), p. 8). The evidence established that Respondent was clearly and correctly instructed of reporting requirements. There was no evidence that Respondent had any impairment to understanding the reporting requirements.

It is found MDHHS clearly and convincingly established that Respondent committed an IPV. Accordingly, MDHHS may proceed with disqualifying Respondent from benefit eligibility.

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 withdrew their request to establish a total OI of \$3,175 in FAP benefits for the periods from October 2012 through May 2013 and May 2014 through June 2015. Based on MDHHS' withdrawal of their request to establish an OI, MDHHS' hearing request is **PARTIALLY DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent committed an IPV based on receipt of FAP benefits of \$3,175 for the periods from October 2012 through May 2013 and May 2014 through June 2015. The MDHHS request to establish an IPV disqualification period of one year 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

Petitioner

MDHHS-OIG-Hearings

DHHS

Tricia Pleva
MDHHS-Kalkaska-Hearings

Respondent

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

M Shumaker
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C Gardocki
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