



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] - [REDACTED]

Date Mailed: June 11, 2018
MAHS Docket No.: 17-015729
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 scheduled for May 24, 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 Nicholas Sultana, 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 September 11, 2016, Respondent submitted to MDHHS an electronic application for FAP benefits. Respondent's household included his wife (hereinafter "Spouse"). Boilerplate application language informed Respondent to report changes in income within 10 days. (Exhibit A, pp. 13-50)

2. On January 17, 2017, MDHHS mailed Respondent a Verification Checklist (VCL). The VCL requested proof of household income from the last 30 days. (Exhibit A, pp. 119-120)
3. On January 30, 2017, MDHHS mailed Respondent a Notice of Time-Limited Food Assistance Month. The notice informed Respondent that January 2017 was subject to a time-limited penalty due to Spouse's failure to meet time-limited FAP requirements. Respondent returned the notice to MDHHS and informed MDHHS that Spouse was pregnant. (Exhibit A, p. 149)
4. On February 13, 2017, MDHHS mailed Respondent a VCL requesting proof of Respondent's household income from the last 30 days. (Exhibit A, pp. 121-122)
5. On March 2, 2017, MDHHS mailed Respondent a VCL requesting proof of Respondent's household income from the last 30 days. (Exhibit A, pp. 126-127)
6. On April 6, 2017, MDHHS mailed Respondent a New Hire Client Notice concerning income for Spouse from an employer (hereinafter "Employer") (Exhibit A, pp. 128-129)
7. On April 21, 2017, MDHHS mailed Respondent a Wage Match Client Notice concerning income for Spouse from Employer. (Exhibit A, pp. 132-133)
8. On August 9, 2017, Respondent submitted to MDHHS an electronic application for FAP benefits. Respondent's household included Spouse. Respondent reported that Spouse's job recently ended. (Exhibit A, pp. 51-96)
9. On an unspecified date, MDHHS's database discovered that Spouse received employment income from Employer during the 4th quarter of 2016, 1st quarter of 2017, and 2nd quarter of 2017. (Exhibit A, p. 97)
10. On August 21, 2017, MDHHS received correspondence from Employer. The correspondence stated that Spouse began employment with Employer on October 16, 2016, and the employment ended on August 15, 2017. (Exhibit A, pp. 97-98)
11. On an unspecified date, MDHHS determined that Respondent received an OI of \$ [REDACTED] in FAP benefits from December 2016 through August 2017. MDHHS' calculations factored that Respondent failed to report Spouse's income from Employer. (Exhibit A, pp. 99-118)
12. On November 2, 2017, MDHHS requested a hearing against Respondent to establish an IPV disqualification of one year based on Respondent's alleged failure to report Spouse's employment income.

13. As of the date of hearing, Respondent had no known 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 by failing to report and/or misreporting employment income which resulted in an OI of FAP benefits. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 4-5) dated November 2, 2017, sent to Respondent as part of MDHHS' prehearing procedures.

An IPV is established by 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.

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 (April 2016), p. 11. Changes must be reported within 10 days of receiving the first payment reflecting the change. *Id.* Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015), p. 8.

MDHHS presented OI budgets from December 2016 through August 2017 which calculated that Respondent received an OI of FAP benefits totaling \$ [REDACTED]. As noted above, an OI was already established against Respondent. Establishment of the OI is relevant for two reasons.

First, establishing an OI is necessary to establish an IPV for the present case. Thus, MDHHS need not again establish an OI against Respondent in order to establish 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 reported employment income. Thus, it can be inferred that the already established OI was caused by Client's failure to timely report employment income. To establish an IPV, MDHHS must establish that Respondent's failure to report employment income was intentional.

MDHHS presented three different VCLs from the OI period which requested proof of household income. At the time of each VCL mailing, MDHHS claimed to be unaware of Spouse's income. MDHHS alleged that Respondent did not return proof of Spouse's income in response to the VCLs. The evidence was indicative that Respondent purposely failed to report Spouse's income.

MDHHS also presented a Notice of Time-Limited Food Assistance Month mailed to Respondent on January 30, 2017. Respondent responded to the notice by reporting Spouse's pregnancy, but not Spouse's ongoing employment income with Employer. It is notable that Respondent reported Spouse's pregnancy to satisfy time-limited FAP requirements, but not Spouse's income which could have also exempted January 2017 as a countable month toward time-limited FAP limits.

The evidence established that Respondent failed to report Spouse's employment income despite multiple MDHHS requests for household income. Respondent did not present any evidence explaining why Spouse's employment income was not reported to MDHHS sooner. The evidence was indicative of an intent to not report Spouse's employment income.

The evidence was not indicative that Respondent did not or could not understand the clear and correct reporting requirements. Based on the evidence, MDHHS established all requirements of an IPV due to Respondent's failure to report employment income.

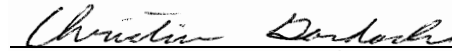
The standard disqualification period is used in all instances except when a court orders a different period. BAM 725 (January 2016), p. 16. [MDHHS is to] apply the following disqualification periods to recipients determined to have committed an IPV ... one year for the first IPV ... two years for the 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/



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

Raina Nichols
MDHHS-Washtenaw-Hearings

Respondent

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

M Shumaker
Policy Recoupment
C Gardocki
MAHS