



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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

Date Mailed: June 7, 2018  
MAHS Docket No.: 17-016731  
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 June 6, 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 Jason Rupp, 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 January 12, 2016, Respondent submitted to MDHHS an application for Food Assistance Program (FAP) benefits. Boilerplate application language states that clients are to report changes, including income, to MDHHS within 10 days. (Exhibit A, pp. 12-29)

2. On February 10, 2016, MDHHS approved Respondent's FAP application and mailed a Notice of Case Action informing Respondent of the approval. Boilerplate language on the notice (and a Change Report mailed with the notice) states that clients are to report changes, including income, to MDHHS within 10 days. (Exhibit A, pp. 30-35)
3. From June 3, 2016, through October 21, 2016, Respondent received employment income from an employer (hereinafter "Employer"). (Exhibit A, p. 65)
4. From August 2016 through October 2016, Respondent received an overissuance of \$[REDACTED] in FAP benefits due to unreported employment income. (Exhibit A, pp. 67-73)
5. On September 12, 2016, Respondent reported to MDHHS employment income from Employer. (Exhibit A, p. 10)
6. On an unspecified date, MDHHS established against Respondent an OI of \$[REDACTED] in FAP benefits for the period from August 2016 through October 2016. (Exhibit A, pp. 63-65)
7. On December 5, 2017, MDHHS requested a hearing to establish Respondent committed an IPV and received an OI of \$[REDACTED] in FAP benefits for the months of April 2014 through August 2014 as a result of unreported employment income. MDHHS also requested a hearing to establish a one-year IPV disqualification against Respondent. (Exhibit A, p. 1)
8. On June 6, 2018, MDHHS verbally withdrew their request to establish an OI against Respondent.

### **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, in part, to establish an OI against Respondent. During the hearing, MDHHS verbally withdrew their request because an OI against Respondent was previously established. Based on MDHHS' partial withdrawal of their hearing MDHHS hearing request will be dismissed concerning establishment of an OI.

MDHHS also requested a hearing to establish a one-year IPV disqualification against Respondent. MDHHS' Hearing Summary and testimony alleged that Respondent committed an IPV by failing to timely report employment income. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 6-7) dated December 5, 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.*

MDHHS presented OI budgets and testimony which sufficiently established that an OI against Respondent was established. 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 no again establish an OI against Respondent as part of their obligations in establishing 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 testimony admitted that Respondent's employment income was self-reported to MDHHS on September 12, 2016. Respondent's self-reporting is consistent with an unintentional failure to timely report employment income.

MDHHS established that Respondent received an overissuance which covered a period of three months and totaled \$ [REDACTED]. Neither the OI amount nor the duration of the OI are particularly indicative that Respondent intentionally failed to timely report income.

Generally, the most persuasive evidence to establish a client's intent is a misreporting of information by the client. MDHHS did not present evidence that Respondent ever misreported employment income.

Based on the evidence, MDHHS did not clearly and convincingly establish that Respondent intentionally failed to report employment income. Thus, it is found that Respondent did not commit 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.*

Without a finding that a client committed an IPV, an IPV disqualification cannot follow. Thus, MDHHS will be denied the request to establish a one-year disqualification against Respondent.

**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 that Respondent received an OI of FAP benefits. Concerning establishment an OI, the MDHHS hearing request is **DISMISSED**.

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

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

**DHHS**

Kathleen Verdoni  
MDHHS-Saginaw-Hearings

**Petitioner**

MDHHS-OIG-Hearings

**Respondent**

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