



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: June 12, 2018  
MAHS Docket No.: 17-016776  
Agency No.: ██████████  
Petitioner: OIG  
Respondent: ██████████

**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 Allyson Carneal, 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 31, 2013, Respondent submitted to MDHHS an application for FAP benefits. Household members included Respondent's spouse (hereinafter "Spouse"). Boilerplate application language informed clients to report changes in income within 10 days. Respondent's application reported that her last pay from employment occurred on January 25, 2013. (Exhibit A, pp. 13-32)

2. From September 29, 2010, to October 2, 2015, Respondent was employed with an employer (hereinafter "Employer1"). Respondent received ongoing pays except during the period from January 25, 2013, through August 9, 2013. (Exhibit A, pp. 37-51)
3. Beginning pay period March 15, 2013, through January 6, 2014, Spouse received ongoing employment income from an Employer (hereinafter "Employer2"). (Exhibit A, pp. 33-36)
4. From March 1, 2013, through July 2, 2013, Respondent received ongoing unemployment compensation benefits (UCB). (Exhibit A, pp. 107-109)
5. On August 30, 2013, Respondent submitted to MDHHS an application for State Emergency Relief (SER) benefits. Spouse was listed as a household member. Respondent reported having no employment or unemployment income in her household. (Exhibit A, pp. 52-71)
6. On September 16, 2013, Respondent submitted to MDHHS an application for SER benefits. Spouse was listed as a household member. Respondent reported having no employment income or unemployment in her household. (Exhibit A, pp. 72-89)
7. On September 27, 2013, Respondent submitted to MDHHS an application for SER benefits. Spouse was listed as a household member. Respondent reported having no employment income or unemployment in her household. (Exhibit A, pp. 90-106)
8. On October 1, 2013, MDHHS documented that Petitioner was approved for \$ [REDACTED] in SER. (Exhibit A, pp. 135, 137-138)
9. From May 2013 through December 2013, Respondent received a total of \$ [REDACTED] in FAP benefits. (Exhibit A, pp. 110-111)
10. On an unspecified date, MDHHS calculated that Respondent received an OI of \$ [REDACTED] in FAP benefits. (Exhibit A, pp. 111-133)
11. On July 19, 2016, an MDHHS staff person documented that Respondent was responsible for an overissuance of \$ [REDACTED] due to unreported income. (Exhibit A, p. 134)
12. On November 28, 2017, MDHHS requested a hearing against Respondent to establish an IPV disqualification of one year based on Respondent's alleged failure to report 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 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. 5-6) dated November 28, 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 documentation from Employer1, which stated that Respondent was employed from September 29, 2010, to October 2, 2015, other than a period in late January 2013 when Respondent appeared to be laid-off. MDHHS also presented documentation from Employer2 stating that Spouse was employed from March 15, 2013, through January 6, 2014. Additionally, Respondent received UCB during while she was laid-off from employment. The evidence sufficiently established periods of income for Respondent and Spouse.

MDHHS presented OI budgets calculating that Respondent received an OI of \$4,486 in FAP benefits due to unreported income. MDHHS testimony credibly indicated that the OI was established against Respondent due to unreported employment and UCB income. The evidence was sufficient that Respondent failed to report employment and UCB income which resulted in an OI. MDHHS alleged that Respondent's failure was intentional.

MDHHS alleged that Respondent's application dated January 31, 2013, misreported Respondent's income. Respondent's application reported no employment income as of the date of application and a stoppage employment as of January 25, 2013. Respondent's statements were consistent with presented pays from Employer1 which verified pays for January 25, 2013 and August 9, 2013, but none in between. Respondent's application statement that she was not receiving employment income was further supported by receipt of UCB beginning in March 2013. Respondent's application statements were not supportive of a misreporting of income.

MDHHS also presented Respondent's SER applications dated August 30, 2013, September 16, 2013, and September 27, 2013. Each application reported no employment income for Respondent or Spouse. As of each application date, Respondent and Spouse were employed and receiving regular pays. Respondent's misreporting on SER applications was indicative of a purposeful failure to report income concerning FAP eligibility.

Boilerplate language on MDHHS applications states 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 was not indicative that Respondent did not or could not understand the clear and correct reporting requirements.

The evidence established that Respondent reported to MDHHS having no employment income at a time that she and Spouse received ongoing employment income. Generally, a client's written statement which contradicts established facts which results in an OI is clear and convincing evidence of an intentional failure to report information. Evidence was not presented to rebut the generality.

Based on the evidence, MDHHS established all requirements of an IPV due to Respondent's failure to report 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/



**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**

Carisa Drake  
MDHHS-Calhoun-Hearings

**Petitioner**

MDHHS-OIG-Hearings

**Respondent**

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

M Shumaker  
Policy Recoupment  
C Gardocki  
MAHS