



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: July 30, 2018
MAHS Docket No.: 17-016977
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 July 23, 2018, from Detroit, Michigan. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled hearing 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 by clear and convincing evidence that Respondent committed an intentional program violation (IPV) which justifies imposing a 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. From November 25, 2016, through December 30, 2016, Respondent received weekly pays from [REDACTED] (hereinafter "Employer2"). Respondent also received one additional pay on January 20, 2017. (Exhibit A, pp. 32-33)
2. On January 27, 2017, Respondent submitted to MDHHS an application for Food Assistance Program (FAP) benefits. Boilerplate language stated that signing the

application was certification that an informational booklet was read (which includes information about reporting changes to MDHHS within 10 days) (Exhibit A, pp. 9-30)

3. On January 27, 2017, Respondent's specialist documented an interview with Respondent. Respondent reported that she received no employment income from [REDACTED] (hereinafter "Employer1") from the last 30 days. (Exhibit A, p. 31)
4. From March 5, 2017, through November 26, 2017, Respondent received ongoing weekly pays from [REDACTED] (hereinafter "Employer3"). (Exhibit A, pp. 35-38)
5. From May 2017 through December 2017, Respondent received \$[REDACTED] in FAP benefits. (Exhibit A, p. 56) Respondent's issuances did not factor income from Employer3.
6. On November 30, 2017, MDHHS calculated that Respondent received an OI of \$[REDACTED] in FAP benefits from May 2017 through December 2017. Budgets factored Respondent's actual income from Employer2 as unreported. (Exhibit A, pp. 39-55)
7. On December 18, 2017, MDHHS requested a hearing to establish an IPV disqualification of one year against Respondent related to an OI of \$[REDACTED] in FAP benefits from May 2017 through December 2017. (Exhibit A, p. 1)
8. During all relevant times, Respondent had no apparent impairment to understanding or fulfilling reporting requirements.
9. 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 alleged that Respondent committed an IPV due to receipt of \$[REDACTED] in over-issued FAP benefits. MDHHS specifically contended that Respondent intentionally failed to report employment income.

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** 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. Changes in income must be reported within 10 days of receiving the first payment reflecting the change. BAM 105 (January 2015), p. 7.

MDHHS' Hearing Summary and testimony asserted that an overissuance of FAP benefits was previously established against Respondent. MDHHS' assertion was consistent with presented OI budgets which calculated an OI of \$██████. Presented OI budgets verified that Respondent's OI was caused by unreported employment income. For an IPV to be established, Respondent's failure to report employment income must have been intentional.

MDHHS contended that Respondent's intent can be gleaned from Respondent's alleged misstatements during a FAP interview on January 27, 2017. Respondent reported that she did not receive income from Employer1 in the previous 30 days. MDHHS verified Respondent received income from an employer with a different name (hereinafter "Employer2") from Employer1. In contending that Respondent misreported information, MDHHS assumed that Employer1 was Employer2, or alternatively, that Respondent told her specialist that Employer1 (not Employer2) was her most recent employer. Presented evidence did not establish that Employer1 was Employer2 or that Respondent reported Employer1 was her most recent employer. Given the evidence, no inference can be made concerning Respondent's intent to misreport based on Respondent's verbal statements dated January 27, 2017.

MDHHS presented Respondent's application dated January 27, 2017. Respondent signed the application which certified that Respondent read a booklet informing

Respondent to report any changes in income to MDHHS within 10 days. The evidence sufficiently placed Respondent on notice to report to MDHHS changes in income.

Respondent ended up receiving eight months of FAP benefits without income from Employer3 being factored. The result was that Respondent received an over-issuance of \$ [REDACTED] in FAP benefits. The duration of the OI period provided Respondent with ample time to report income from Employer3. The amount of the OI provided Respondent with ample motive to purposely not report income from Employer3. Respondent did not appear for the hearing to present any alternative explanation for her delay in reporting income from Employer3.

Given the evidence, Respondent clearly and convincingly intentionally failed to report employment income for the purpose of receiving an over-issuance of FAP benefits. Thus, MDHHS established an IPV by Respondent.

The standard disqualification period is used in all instances except when a court orders a different period. 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. BAM 725 (January 2016), p. 16.

MDHHS did not allege a previous IPV by Respondent. Thus, a one-year disqualification is proper for Respondent's first IPV.

DECISION AND ORDER

The undersigned administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent committed an IPV by failing to report income resulting in an OI of FAP benefits. The MDHHS request to establish a one-year 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]
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C Gardocki
MAHS