



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: July 5, 2018  
MAHS Docket No.: 18-000693  
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 July 2, 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 Kelvin Christian, regulation agent with the Office of Inspector General. Respondent did not appear for the hearing.

**ISSUES**

The first issue is whether MDHHS established that Respondent received an overissuance (OI) of benefits.

The second 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 13, 2014, MDHHS mailed Respondent a Notice of Case Action informing Respondent of an approval of FAP benefits from October 2014. Respondent's ongoing FAP eligibility included her spouse (hereinafter "Spouse") as a group member. A budget summary listed that \$0 employment

income was factored. Boilerplate language stated that clients are to report changes in income and address within 10 days. (Exhibit A, pp. 11-15)

2. On November 12, 2014, Respondent returned a Redetermination to MDHHS. Respondent reported that Spouse received ongoing monthly employment income of \$ [REDACTED] /week, which started "one year ago". (Exhibit A, pp. 16-19)
3. For the tax year of 2014, Respondent and Spouse, filed a tax return listing \$ [REDACTED] in employment income. (Exhibit A, pp. 20-23)
4. From January 2014 through September 2014, Respondent received \$ [REDACTED] /month in FAP benefits. For October 2014 and November 2014, Respondent received \$ [REDACTED] /month in FAP benefits. (Exhibit A, pp. 24-25)
5. On an unspecified date, MDHHS calculated that Respondent received an OI of \$ [REDACTED] in FAP benefits from January 2014 through November 2014 due to unreported employment income from Spouse. The calculation factored that Respondent received a total of \$ [REDACTED] in FAP benefits during the OI period, but was eligible to only receive a total of \$ [REDACTED] MDHHS factored a monthly income for Spouse of \$ [REDACTED] (Exhibit A, pp. 30-41)
6. On January 25, 2018, MDHHS requested a hearing to establish that Respondent received an OI of FAP benefits from January 2014 through November 2014 totaling \$ [REDACTED] MDHHS also requested a hearing to establish that Respondent committed an IPV justifying imposing a 1-year disqualification period.
7. 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 received an OI of \$ [REDACTED] from January 2014 through November 2014. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 6-7) sent to Respondent as part of MDHHS' prehearing procedures. The basis of the OI was unreported employment income for Spouse.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. Recoupment is a MDHHS action to identify and recover a benefit overissuance. BAM 700 (January 2016), pp. 1-2.

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 presented a letter dated April 28, 2015 (Exhibit A, p. 42) from Spouse's employer. The letter stated that Spouse began employment on February 1, 2012, and left employment in March 2015. Respondent also stated in November 2014 that Spouse was employed for one year. Given the evidence, MDHHS established that Spouse was employed throughout 2014.

MDHHS calculated Spouse's monthly average income in 2014 to be \$ [REDACTED]. The average was calculated by dividing Spouse's employment income as listed on a 2014 tax return by 12.

MDHHS presented FAP budgets demonstrating how an OI was calculated. The OI budgets calculated Respondent's proper monthly issuance by factoring Spouse's average monthly pay. Presumably, the OI budgets did not change any FAP benefit factors other than Spouse's previously unbudgeted employment income. The budgets factored Respondent's actual issuances from the OI period. A total OI of \$ [REDACTED] was calculated for the OI period.

The OI budgets deprived Respondent of a 20% income credit because Respondent allegedly failed to report Spouse's employment income. BEM 556 states that clients who fail to report employment income are not entitled to the credit. Thus, for the budgets to be correct, it must be established that Respondent failed to report Spouse's employment income. Respondent received FAP benefits during the alleged OI period without inclusion of Spouse's income. Respondent did not appear for the hearing to allege timely reporting of income. Given the evidence, Respondent failed to report Spouse's employment income during the OI period; thus, MDHHS properly deprived Respondent of a 20% credit for reporting income.

Presented evidence established that Respondent's failure to report employment income resulted in an OI of \$ [REDACTED] from January 2014 through November 2014. Thus, MDHHS established an OI of \$ [REDACTED] against Respondent. MDHHS also requested a hearing to establish an IPV disqualification against Respondent.

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).

It has already been established that Respondent received an overissuance of \$ [REDACTED] due to Respondent's failure to report employment income. For an IPV to be established, Respondent's failure to report employment income must be intentional.

MDHHS appeared to learn of Spouse's employment income from Respondent's reporting on a Redetermination. Respondent's reporting of Spouse's income is not consistent with an intent to defraud MDHHS.

MDHHS presented multiple documents with boilerplate language informing clients of a need to report changes within 10 days. Though reporting documents advise clients to report changes within 10 days, they do not ensure that a client would not forget to report. Inclusion of boilerplate language also does not ensure that Respondent bothered read the boilerplate language to become aware of reporting requirements.

MDHHS did not present verification of a written misreporting by Respondent. Generally, MDHHS will have difficulty in establishing a client's purposeful failure to report information without evidence of misreporting. Presented evidence was not persuasive in overcoming the general rule.

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 their 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 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**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent received a total overissuance of \$██████ in FAP benefits from January 2014 through November 2014. The MDHHS request to establish an overissuance 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**

Clarence Collins  
MDHHS-Wayne-55-Hearings

**Petitioner**

MDHHS-OIG-Hearings

**Respondent**

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

M Shumaker  
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