



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.: 18-001736
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 held on July 2, 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 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 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. As of September 2015, Respondent was an ongoing FAP benefit recipient.

2. On or near September 9, 2015, Respondent received a worker's compensation net award amount of \$ [REDACTED] (Exhibit A, p. 10).
3. On December 28, 2015, Respondent submitted a Redetermination to MDHHS. Respondent reported no cash assets (Exhibit A, pp. 11-16).
4. On or near June 17, 2016, Respondent paid \$ [REDACTED] for a house (Exhibit A, p. 17).
5. In October 2015, Respondent received \$ [REDACTED] in FAP benefits. From November 2015 through August 2016, Respondent received a total of \$ [REDACTED] in FAP benefits (Exhibit A, pp. 18-19).
6. By the end of August 2016, Respondent's cash assets were less than \$ [REDACTED]
7. On February 27, 2018, MDHHS requested a hearing to establish Respondent received an OI of \$ [REDACTED] in FAP benefits from October 2015 through August 2016. MDHHS also requested a hearing to establish a 1-year disqualification period against Respondent. (Exhibit A, p. 1)
8. 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] in FAP benefits. 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 asset ineligibility.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (January 2016), p. 1. An overissuance [bold lettering removed] is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. *Id.* Recoupment [bold lettering removed] is an MDHHS action to identify and recover a benefit overissuance. *Id.*, p. 2.

Assets must be considered in determining eligibility for FAP. BEM 400 (July 2015), p. 1. Assets for FAP benefits must be, \$5,000 or less. *Id.*, p. 5.

Presented documents verified that Respondent received over a net of \$ [REDACTED] in September 2015 and that Respondent bought a home in August 2016 for \$ [REDACTED]. The evidence was indicative that Respondent had at least \$5,000 in assets throughout the OI period from October 2015 through August 2016.

An Investigation Report by the testifying regulation agent indicated that he interviewed Respondent on February 23, 2018, concerning his assets from the alleged OI period. The agent testified that Respondent admitted having at least \$5,000 in cash during the alleged OI period. The agent further testified that Respondent reported that his assets dwindled to a nominal amount in August 2016 after a home purchase and paying for various home improvements.

Based on the evidence, Respondent had at least \$5,000 during the alleged OI period. Thus, Respondent was ineligible to receive all FAP benefits from the OI period. Respondent's issuance history verified that Respondent received \$ [REDACTED] in FAP benefits during the OI period. Thus, MDHHS established an OI of \$ [REDACTED] against Respondent. MDHHS further alleged that the OI was caused by Respondent's IPV.

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).

MDHHS presented Respondent's Redetermination dated December 28, 2015, which reported no cash assets. Based on the testifying regulation agent's interview with Respondent, as of December 2015, Respondent, at the time of Redetermination, must

have had at least the \$ [REDACTED] used to later buy a home. Thus, Respondent's reporting of \$0 cash assets was a misreporting.

The regulation agent testified that Respondent claimed he did not think he had to report the assets because he did not put it into a bank. The Redetermination asked Respondent to report "all" cash assets, including "lawsuit settlements". Respondent's excuse for not reporting assets is not a persuasive.

Boilerplate language on the Redetermination stated that Respondent'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 misreported information in writing to MDHHS by claiming an absence of cash assets at a time when Respondent had at least \$5,000 in cash assets. Respondent's misreporting directly led to an OI of benefits. Generally, a client's written statement which contradicts known facts resulting in an OI is clear and convincing evidence of an IPV. Evidence was not presented to rebut the generality.

It is found MDHHS clearly and convincingly established that Respondent committed an IPV. Accordingly, MDHHS may proceed with disqualifying Respondent from benefit eligibility.


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 justified.

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 based on receipt of \$ [REDACTED] in over-issued FAP benefits from October 2015 through August 2016. The MDHHS requests to establish an overissuance and a disqualification period of one year against Respondent are **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]

M Shumaker
Policy Recoupment
C Gardocki
MAHS