



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 5, 2018  
MAHS Docket No.: 18-003561  
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 June 28, 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 Meghan Kerr, 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 August 12, 2015, Respondent electronically submitted to MDHHS an application for Food Assistance Program (FAP) benefits. Boilerplate language stated that the client's signature is certification that a section of an Informational booklet was read (which includes information that clients are to report changes to MDHHS within 10 days). (Exhibit A, pp. 12-19)

2. On August 14, 2015, MDHHS mailed a Notice of Case Action approving Respondent for FAP benefits. Boilerplate language stated that clients are to report to MDHHS changes affecting eligibility within 10 days. A Change Report mailed with the Notice of Case Action also included boilerplate language of the same. (Exhibit A, pp. 20-25)
3. On January 17, 2018, a regulation agent received correspondence from the Michigan Department of Corrections (MDOC) that Respondent was incarcerated from October 1, 2015, through November 17, 2016. (Exhibit A, p. 26)
4. From December 2015 through June 2016, Respondent received \$ [REDACTED] in FAP benefits. (Exhibit A, pp. 29-30)
5. On March 30, 2018, MDHHS requested a hearing to establish that Respondent committed an IPV justifying imposing a 1-year disqualification period related to an overissuance of \$ [REDACTED] in FAP benefits.
6. During all relevant times, Respondent had no apparent impairment to understanding or fulfilling reporting requirements.
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 committed an IPV based on Respondent's receipt of \$ [REDACTED] in over-issued FAP benefits from December 2015 through June 2016. 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. MDHHS specifically alleged that Respondent committed an IPV by intentionally failing to report incarceration.

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).

A person in a federal, state or local correctional facility for more than 30 days is not eligible to receive FAP benefits. BAM 804 (July 2014) p. 1. Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes in address must be reported within 10 days of receiving the first payment reflecting the change. BAM 105 (January 2015), p. 7.

MDHHS presented multiple documents informing Respondent of the need to report changes within 10 days. Respondent presented no evidence of ignorance or misunderstanding of the clear and correct reporting requirements.

MDHHS' inquiry to MDOC staff verifying Respondent's dates of incarceration was indicative that MDHHS learned of Respondent's incarceration from a source other than Respondent. There was no evidence that Respondent informed MDHHS of his incarceration, either during or after incarceration. Respondent's apparent failure to report incarceration to MDHHS is consistent with an intentional failure to report incarceration.

Given the evidence, 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. The MDHHS request to establish a disqualification period of one year 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

**Petitioner**

MDHHS-OIG-Hearings

**DHHS**

Sheila Crittenden  
MDHHS-Wexford-Missaukee-Hearings

**Respondent**

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

M Shumaker  
Policy Recoupment  
C Gardocki  
MAHS