



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 25, 2018  
MAHS Docket No.: 18-005258  
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. Maria Williams, regulation agent with the Office of Inspector General, represented MDHHS. Amber Johnson, regulation agent with the Office of Inspector General, observed the hearing. 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. On October 11, 2012, 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). Respondent accurately reported that he worked for an employer (hereinafter "Employer") and that he was currently receiving short-term disability payments. (Exhibit A, pp 11-34)

2. On June 22, 2016, MDHHS received Respondent's pay history from Employer. From August 24, 2012, through November 16, 2012, Respondent received ongoing weekly pays of \$[REDACTED]/week. From November 23, 2012, through September 22, 2013, Respondent received weekly employment income (the majority of Respondent's weekly gross checks exceeded \$1,000). (Exhibit A, pp. 35-38)
3. From January 2013, through September 2013, Respondent received monthly FAP benefits of \$[REDACTED] (Exhibit A, pp. 39-40)
4. On July 1, 2016, MDHHS calculated that Respondent received an OI of \$[REDACTED] in over-issued FAP benefits from January 2013 through September 2013 due to Respondent's unreported employment income. (Exhibit A, pp. 42-60)
5. On March 22, 2017, MDHHS received \$[REDACTED] in a treasury offset as payment for Respondent's overissuance. (Exhibit A, p. 61)
6. On April 30, 2018, MDHHS requested a hearing to establish an IPV disqualification of one year against Respondent related to an OI of \$[REDACTED] in FAP benefits from January 2013 through September 2013. (Exhibit A, p. 1)
7. During all relevant times, Respondent had no apparent impairment to understanding or fulfilling reporting requirements.
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 committed an IPV related to an OI of \$[REDACTED] in FAP benefits. The basis of the IPV was Respondent's failure to report employment income. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 4-5) sent to Respondent as part of MDHHS' prehearing procedures.

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).

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 (April 2016), p. 11.

MDHHS testimony credibly indicated that an overissuance of FAP benefits was previously established against Respondent. MDHHS' testimony was verified by documentation showing that Respondent paid \$██████ to repay previously over-issued FAP benefits. Presented OI budgets verified that Respondent's OI was calculated based on unreported employment income. For an IPV to be established, Respondent's failure to report must be intentional.

MDHHS presented Respondent's application dated October 11, 2012. 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 any changes in income.

Respondent ended up receiving nine months of FAP benefits without income from Employer being factored. The result was that Respondent received an over-issuance of FAP benefits which exceeded \$3,000. The duration of the OI period provided Respondent with ample time to report income from Employer. The amount of the OI provided Respondent with ample motive to not report income from Employer.

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

**Petitioner**

MDHHS-OIG-Hearings

**DHHS**

Randa Chenault  
MDHHS-Oakland 3-Hearings

**Respondent**

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██████████ MI ██████-██████

M Shumaker  
Policy Recoupment  
C Gardocki  
MAHS