



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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Date Mailed: July 24, 2018  
MAHS Docket No.: 18-005276  
Agency No.: ██████████  
Petitioner: OIG  
Respondent: ██████████

**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 18, 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. On September 9, 2014, Respondent submitted to MDHHS a Redetermination concerning ongoing FAP eligibility. Respondent accurately reported no employment income. (Exhibit A, pp. 9-14)
2. On September 9, 2014, MDHHS mailed Respondent a Notice of Case Action informing Respondent of an approval of FAP benefits from October 2014. A budget summary stated that Respondent's eligibility was based on \$0

employment income. Boilerplate language stated that clients are to report changes in income and address within 10 days. A Change Report mailed with the Notice of Case Action also included boilerplate language that clients are to report to MDHHS changes within 10 days. (Exhibit A, pp. 15-20)

3. From October 2014 through September 2015, Respondent received ongoing FAP benefits of \$ [REDACTED] (Exhibit A, pp. 48-49)
4. From October 23, 2014, through January 28, 2016, Respondent received ongoing biweekly income from an employer (hereinafter "Employer"). (Exhibit A, pp. 21-24)
5. On April 9, 2017, MDHHS calculated that Respondent received an overissuance of \$ [REDACTED] in FAP benefits from December 2014 through September 2015 due to unreported income from Employer. (Exhibit A, pp. 27-47)
6. On May 9, 2018, MDHHS requested a hearing to establish an IPV disqualification of one year against Respondent. (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. Presented evidence sufficiently established that the overissuance was caused by Respondent's failure to report employment income. For an IPV to be established, Respondent's failure to report must be intentional.

MDHHS contended that Respondent was aware of the need to report employment income based on receipt of a Notice of Case Action dated September 9, 2014. The notice included a page of boilerplate language informing clients to report changes to MDHHS within 10 days. Even if Respondent did not read the boilerplate language, a budget summary informing Respondent of FAP benefits based on \$0 employment income should have put Respondent on notice to report when he started employment. MDHHS applications are also known to include language informing clients to report to MDHHS newly starting income within 10 days.

It is also notable that Respondent received FAP benefits for approximately 11 months without reporting employment income. The duration is sufficiently lengthy that Respondent had ample time to report employment income to MDHHS. Furthermore, the \$[REDACTED] in over-issued FAP benefits is more than a nominal sum whereby Respondent would have motive to not report income.

Comments from Respondent's specialist (Exhibit A, p. 25) documented that when Respondent reported income from Employer (after MDHHS requested verification) he told his specialist that he knew he was supposed to report income but he did not want to lose Medicaid. The documentation was further support that Respondent intentionally failed to report income from Employer for the purpose of an overissuance.

Given the evidence, it is found that MDHHS gave Respondent clear and correct reporting requirements and that MDHHS intentionally failed to report income which resulted in an overissuance 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. 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 that Respondent previously committed an IPV. Thus, a one-year disqualification period is proper.

### **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 justifying a one-year disqualification period. The MDHHS request to establish an IPV 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]  
[REDACTED]  
[REDACTED] MI [REDACTED] [REDACTED]

M Shumaker  
Policy Recoupment  
C Gardocki  
MAHS