



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: August 29, 2018
MAHS Docket No.: 18-002514
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 August 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 Jonetta Greene, 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 June 11, 2012, Respondent submitted to MDHHS an application for Food Assistance Program (FAP) benefits. Respondent reported that her living-together partner (hereinafter "LTP") was in the home. (Exhibit A, pp. 12-32)
2. On September 11, 2012, Respondent reported to MDHHS that LTP was no longer in the home. (Exhibit A, pp. 33-37)

3. Following an investigation, MDHHS determined that LTP was in the home and had never left Respondent's home (see Exhibit A, p. 4). As a result, MDHHS kept LTP in Respondent's FAP group.
4. From November 21, 2012, through April 18, 2013, LTP received ongoing employment income. (Exhibit A, pp. 45-71)
5. From December 7, 2012, through January 18, 2013, Respondent received ongoing employment income. (Exhibit A, pp. 74-77)
6. On December 3, 2012, MDHHS mailed Respondent a Notice of Case Action which listed LTP as a FAP group member. A budget summary listed that Respondent's ongoing eligibility factored \$0 employment income. (Exhibit A, pp. 38-43)
7. On March 12, 2013, MDHHS mailed a Wage Match Client Notice (Exhibit A, pp. 72-73) concerning Respondent's employment.
8. On April 15, 2013, MDHHS mailed a Wage Match Client Notice (Exhibit A, p. 44) concerning LTP's employment.
9. On January 14, 2016, MDHHS calculated that Respondent received an OI of \$ [REDACTED] in FAP benefits from November 2012 through April 2013 due to unreported and unbudgeted employment income for Respondent and LTP. OI amounts for November 2012 and December 2012 totaled \$ [REDACTED]. The FAP benefit OI factored Respondent's and LTP's actual gross earnings for all benefit months from November 2012 through April 2013. (Exhibit A, pp. 78-90).
10. On an unspecified date, MDHHS established an OI of \$ [REDACTED] in FAP benefits against Respondent.
11. On March 16, 2018, MDHHS requested a hearing to establish that Respondent committed an IPV justifying imposing a one-year disqualification period due to unreported income. (Exhibit A, p. 1)

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 by failing to report and/or misreporting income which resulted in an OI of 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.

An intentional program violation is considered to have occurred when a household member knowingly, willingly, and with deceitful intent:

- (1) Makes a false or misleading statement, or misrepresents, conceals, or withholds facts in order to obtain Food Distribution Program benefits which the household is not entitled to receive; or
- (2) Commits any act that violates a Federal statute or regulation relating to the acquisition or use of Food Distribution Program commodities. 7 CFR 253.8 (a)

An IPV is established by 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.

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. BAM 105 (April 2016), p. 11. Changes must be reported within 10 days of receiving the first payment reflecting the change. *Id.* Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015), p. 8.

MDHHS established an OI of \$ [REDACTED] in FAP benefits for the period from November 2012 through April 2013 was imposed against Respondent due to unreported income. OI budgets (Exhibit A, pp. 78-90) demonstrated that MDHHS calculated the OI by counting all income from LTP's employment which started in November 2012. MDHHS did not delay the OI by factoring Respondent's time to report income (10 days), MDHHS time to process changes (10 days), and the minimum time that a negative action pends after

notice (12 days or more). MDHHS policy requires that MDHHS factor these timeframes in determining the first OI month.¹ Had MDHHS properly delayed the first OI month, an OI period would not have begun sooner than January 2013. Unfortunately for Respondent, the OI cannot be altered by the present decision as the only issue is whether Respondent committed an IPV. In determining whether an IPV occurred, no consideration will be given to the inflated OI amount merely because it was previously established against Respondent.

MDHHS established a proper OI period of no longer than January 2013 through April 2013. The duration of the period is not so substantial that an intent to not report income can be inferred.

MDHHS calculated an OI of \$ [REDACTED] for the benefit period. Subtracting OI amounts from November 2012 and December 2012 (\$ [REDACTED] total) from the OI of \$ [REDACTED] results in an OI of \$ [REDACTED]. The OI amount is not so substantial that an IPV can be inferred.

MDHHS established that Respondent signed an application which included boilerplate language stating that signing the application was certification of reading a section including information about reporting changes to MDHHS within 10 days. Inclusion of the boilerplate language in an application does not verify that Respondent read the language, absorbed the language, or remembered the obligation upon later receipt of employment income.

MDHHS also presented a Notice of Case Action which informed respondent that \$0 employment income was budgeted in Respondent's FAP eligibility at a time LTP was employed. The notice does not clearly and convincingly verify that Respondent read the notice or knew to report to MDHHS that LTP's unfactored employment income should be updated.

MDHHS implied that Respondent's fraudulent intent can be inferred from misleading reporting of LTP being in her home. The evidence established that Respondent reported a change in household members which an MDHHS investigation later found to be inaccurate. Even if Respondent had a deceitful intent in reporting that LTP left her home, the evidence provides little insight in whether Respondent later purposely failed to report employment income.

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 a written misreporting; the evidence was not persuasive in overcoming the generality.

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.

¹ BAM 720 (October 2017) p. 7

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; 7 CFR 253.8 (b).

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**.

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

Lauren Casper
MDHHS-Macomb-20-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
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M Shumaker
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MAHS