



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: October 4, 2018
MAHS Docket No.: 18-004118
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 September 26, 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 Jason Rupp, 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 23, 2015, Respondent submitted to MDHHS an application for Food Assistance Program (FAP) benefits. Boilerplate application language stated that signing the application was certification that a Rights and Responsibilities section was read; one of the stated responsibilities was that clients are to report changes, such as income and address, to MDHHS within 10 days. (Exhibit A, pp. 15-27)

2. On July 7, 2015, MDHHS mailed a Notice of Case Action informing Respondent of an approval of FAP benefits. Boilerplate language stated that clients are to report changes to MDHHS within 10 days. (Exhibit A, pp. 28-32)
3. On December 5, 2015, MDHHS mailed a Notice of Case Action informing Respondent of continuation of FAP benefits. Boilerplate language stated that clients are to report changes to MDHHS within 10 days. (Exhibit A, pp. 39-42)
4. From February 2016 through April 2017, Respondent received a total of \$ [REDACTED] in FAP benefits. (Exhibit A, pp. 97-100)
5. On April 6, 2016, Respondent submitted to MDHHS a Redetermination for FAP benefits. Respondent reported that no persons in her household had income. (Exhibit A, pp. 44-50)
6. On April 13, 2016, Respondent submitted an application for State Emergency Relief (SER) to MDHHS. Respondent reported chore service provider employment as her household's only source of income. (Exhibit A, pp. 51-69)
7. On October 7, 2016, MDHHS mailed Respondent a Notice of Case Action informing Respondent of ongoing FAP eligibility. A budget summary listed Respondent's unearned income as \$0. (Exhibit A, pp. 80-83)
8. On April 3, 2017, Respondent reported Retirement, Survivors and Disability Insurance (RSDI) to MDHHS on a Redetermination. (Exhibit A, pp. 85-92)
9. On April 6, 2017, an MDHHS employee called Social Security Administration (SSA) inquiring when Respondent received her first RSDI payment. The employee documented that Respondent received her first payment on December 1, 2015. (Exhibit A, p. 96)
10. On October 23, 2017, a second MDHHS employee called SSA inquiring when Respondent received her first RSDI payment. The employee documented that Respondent received her first payment on December 1, 2015. (Exhibit A, pp. 93-95)
11. On October 24, 2017, MDHHS calculated that Respondent received an overissuance (OI) of \$ [REDACTED] in FAP benefits from February 2016 through April 2017 based on unreported RSDI. (Exhibit A, pp. 100-130).
12. On an unspecified date, MDHHS established that Respondent received an OI of \$ [REDACTED] in FAP benefits from February 2016 through April 2017 due to unreported RSDI.

13. On April 18, 2018, MDHHS requested a hearing to establish that Respondent received an IPV disqualification of one year against Respondent. (Exhibit A, pp. 1-2)
14. 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 based on Respondent's failure to report RSDI. MDHHS testimony indicated that the OI was previously established; the MDHHS testimony was unrebutted and consistent with presented budgets. In the present hearing, MDHHS sought to establish a disqualification period based on an allegation that the OI was caused by an 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. 1.¹

IPV is suspected when there is **clear and convincing** 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

¹ See also 7 CFR 253.8 for the corresponding federal regulations.

reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

MDHHS provided documentation from two different MDHHS staff who called SSA concerning when Respondent began receiving RSDI. Both MDHHS staff persons documented that SSA stated that Respondent received her first monthly RSDI payment on December 1, 2015; no evidence suggested otherwise.

If Respondent received her first regular RSDI payment on December 1, 2015, it would be expected that Respondent would report the income to MDHHS within 10 days.² OI budgets and un rebutted testimony established that Respondent received an OI from unbudgeted RSDI. Consideration must be given to determining whether the OI was caused by Respondent's intentional misreporting.

Respondent failed to list receipt of RSDI on a Redetermination, which she submitted to MDHHS in April 2016. Also, Respondent applied for SER in April 2018 and again failed to list RSDI as a source of household income. As of April 2016, Respondent received RSDI for several months. Respondent's failure to report RSDI on multiple reporting documents is highly consistent with an intent to misreport income for the purpose of receiving over-issued FAP benefits.

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 intent to commit 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. 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. 16.³

MDHHS did not allege that Respondent previously committed an IPV. Thus, a one-year disqualification period is justified.

² See BAM 105 (April 2016), p. 11

³ See also 7 CFR 253.8 (b) for the corresponding federal regulations.

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 over-issued FAP benefits from February 2016 through April 2017. The MDHHS request to establish a one-year disqualification period 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

Kathleen Verdoni
MDHHS-Saginaw-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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

M Shumaker
Policy Recoupment
C Gardocki
MAHS