



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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

Date Mailed: August 9, 2018  
MAHS Docket No.: 18-004726  
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 6, 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 Meghan Kerr, 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, 2015, Respondent submitted to MDHHS an application for FAP benefits. Boilerplate application language stated that the client's signature was certification that the client read an informational booklet (which informs clients to report changes to MDHHS within 10 days). (Exhibit A, pp. 11-21)
2. On September 10, 2015, MDHHS mailed Respondent a Notice of Case Action informing Respondent of an approval of FAP benefits. 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. 22-27)

3. From November 13, 2015, through October 7, 2016, Respondent was employed with an employer (hereinafter "Employer") and received ongoing weekly pays. (Exhibit A, pp. 38-48)
4. On June 1, 2016, MDHHS mailed Respondent a Notice of Case Action informing Respondent of an approval of FAP benefits. Boilerplate language stated that clients are to report changes in income and address within 10 days. A budget summary listed that Petitioner's FAP benefit was calculated based on \$0 employment income. (Exhibit A, pp. 28-31)
5. On September 12, 2016, MDHHS received Respondent's Redetermination. Respondent reported no employment income. (Exhibit A, pp. 32-37)
6. On various dates, Respondent received income from Employer and spent EBT benefits (Exhibit A, pp. 49-55)
7. On May 23, 2017, MDHHS established an overissuance (OI) of \$ [REDACTED] against Respondent. (Exhibit A, pp. 56-78)
8. On May 14, 2018, MDHHS requested a hearing against Respondent to establish an IPV disqualification of one year based on Respondent's alleged failure to report income.
9. 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 alleged that Respondent committed an IPV due to receipt of \$ [REDACTED] in over-issued FAP benefits. MDHHS specifically contended that Respondent intentionally failed to report employment income.

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** 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 (January 2015), p. 7.

MDHHS' Hearing Summary and testimony asserted that an overissuance of FAP benefits was previously established against Respondent. Bridges documentation verified that an OI of \$██████ was established against Respondent on May 23, 2017 (Exhibit A, p. 78). Presented OI budgets verified that Respondent's OI was caused by unreported employment income. For an IPV to be established, Respondent's failure to report employment income must have been intentional.

MDHHS contended that Respondent's intent to not report income is consistent with Respondent's history of pay dates and FAP expenditures. Respondent's employment history and FAP expenditure history verified that Respondent received employment income and spent FAP benefits on the same date several times. MDHHS' contention assumes a close proximity between Respondent's receipt of pay and FAP expenditures reminded Respondent to report employment income to MDHHS. The MDHHS assumption is speculative and not particularly insightful concerning Respondent's awareness of a need to report changes.

More notably, MDHHS presented Respondent's Redetermination dated September 12, 2016, which reported no employment income. Respondent signed the document which certified that all reported information was accurate. Respondent's claimed absence of employment directly contradicted Respondent's employment records which verified that Respondent received ongoing employment income for the past several months.

Respondent's Redetermination was an unambiguous misreporting of income. Generally, a written misreporting that directly leads to an OI of benefits is clear and convincing evidence of an IPV; evidence was not presented to rebut the generality. It is found that 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**

Sheila Crittenden  
MDHHS-Missaukee-Hearings

**Respondent**

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

M Shumaker  
Policy Recoupment  
C Gardocki  
MAHS