



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: September 24, 2018
MAHS Docket No.: 18-005771
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 20, 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 Debra Echinaw, 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 January 13, 2015, Respondent submitted to MDHHS a Redetermination. (Exhibit A, pp. 11-16)
2. On March 4, 2015, Respondent submitted to MDHHS documentation from her employer stating that she stopped working. (Exhibit A, p. 17)

3. On March 17, 2015, MDHHS mailed Respondent a Notice of Case Action (Exhibit A, pp. 18-21) approving Respondent for FAP benefits beginning March 2015. A budget summary stated that Respondent's eligibility was based on \$0 employment income. Boilerplate language stated that clients must report changes to MDHHS within 10 days.
4. On March 17, 2015, MDHHS also mailed Respondent a Change Report (Exhibit A, pp. 22-23). Boilerplate language on the Change Report advised Respondent to use the document to report changes to MDHHS within 10 days.
5. On April 24, 2015, and from June 19, 2015, through July 31, 2015, Respondent received regular biweekly pays from an employer (hereinafter, "Employer1") (see Exhibit A, pp. 24-25). During Respondent's period of employment, Respondent used FAP benefits on or near (1-2 days) employment pay dates on multiple occasions (see Exhibit A, pp. 29-41).
6. From August 6, 2015, through December 17, 2015, Respondent received ongoing weekly pays from an employer (hereinafter, "Employer2") (see Exhibit A, pp. 26-28). During Respondent's period of employment, Respondent spent FAP benefits on or near (1-2 days) employment pay dates on multiple occasions (see Exhibit A, pp. 29-41).
7. On June 28, 2017, MDHHS established that Respondent received \$[REDACTED] in over-issued FAP benefits over the period from October 2015 through December 2015. The basis of the overissuance was Respondent's failure to report employment income. (Exhibit A, pp. 42-44)
8. On May 31, 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, pp. 1-2)

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 employment 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 IPV is a benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his/her 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 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.*

MDHHS presented documents from their database verifying that Respondent was responsible for repayment of \$[REDACTED] in over-issued FAP benefits. The documents stated that Respondent failed to report employment income which began in August 2015. The evidence was supportive that Respondent failed to report employment income which resulted in an overissuance of FAP benefits. For an IPV to be established, MDHHS must also clearly and convincingly establish that Respondent's failure to report was intentional.

Respondent reported a stoppage in employment to MDHHS on March 14, 2015. Respondent's reporting in March 2015 was supportive in finding that Respondent was aware of the process to report changes. Respondent's previous reporting does not verify that Respondent's reporting was motivated by awareness of the need to report changes.

¹ See 7 CFR 253.8 for the corresponding federal regulations.

MDHHS provided Respondent with multiple documents which included boilerplate language informing clients of a need to report changes. The documents tended to establish that Respondent could have been aware of the need to report changes. Inclusion of boilerplate language on MDHHS mailings does not verify that Respondent read or absorbed the requirement to report changes.

MDHHS contended that an intent to not report employment income can be inferred based on Respondent's FAP expenditures which occurred on or near dates that she received employment income. The MDHHS contention presumes some type of link between reporting income, receiving income, and spending FAP benefits. When clients receive FAP benefits and employment income, some clients may think of reporting income immediately to MDHHS; others may not. Little can be inferred about Respondent's intent concerning income reporting merely because she spent FAP benefits on or near employment pay dates.

MDHHS established that Respondent received \$[REDACTED] in FAP over a period from October 2015 through December 2015. The amount of OI is not so large that a purposeful intent to not report income can be inferred. The duration of the OI is also not so lengthy that such an intent can be inferred.

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.

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. 16.²

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.

² See 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 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

Alison Gordon
MDHHS-Barry-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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[REDACTED] MI [REDACTED]

M Shumaker
Policy Recoupment
C Gardocki
MAHS