



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.: 18-005817  
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 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 Adriana Laugavitz, 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 an electronic application for FAP benefits. Boilerplate language stated that Respondent's signature was certification that Respondent read and understood a section informing clients to report changes within 10 days. (Exhibit A, pp. 9-34)

2. From May 7, 2015, through December 2015, Respondent received ongoing employment income. (Exhibit A, pp. 36-48)
3. From July 2015 through December 2015, Respondent received an overissuance of \$ [REDACTED] in FAP benefits due to unreported employment income. (Exhibit A, pp. 50-62)
4. On December 1, 2015, MDHHS mailed Respondent a Notice of Missed Interview (Exhibit A, p. 35). Respondent's FAP eligibility ended after December 2015 (see Exhibit A, p. 49) as Respondent did not pursue continued benefits.
5. On an unspecified date, MDHHS established an OI of \$ [REDACTED] in FAP benefits against Respondent.
6. On June 5, 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 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. 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/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.<sup>1</sup>

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 budgets indicating that Respondent received \$[REDACTED] in over-issued FAP benefits from July 2015 through December 2015. Unrebutted MDHHS testimony credibly indicated that the OI was caused by Respondent's failure to timely report income and that the OI has already been established. For an IPV to be established, MDHHS must also clearly and convincingly establish that Respondent's failure to report income was intentional.

Respondent's signed application included boilerplate language informing clients of a need to report changes. Inclusion of boilerplate language does not verify that Respondent read the requirement to report changes. Even if Respondent was aware of the need to report changes as of her application date, Respondent's awareness does not guarantee that Respondent retained the information when beginning employment months later.

MDHHS contended that an intent to not report employment income can be inferred based on the closure of Respondent's FAP eligibility. The evidence tended to establish that Respondent voluntarily did not pursue continued FAP eligibility after December 2015. MDHHS contended that Respondent did not pursue benefits because she knew that she would be ineligible for future benefits because of employment income. Given the evidence, Respondent's reasoning for not pursuing continued FAP eligibility is purely speculative and not insightful in determining Respondent's intent concerning reporting income.

MDHHS established that Respondent received \$[REDACTED] in FAP over a period from July 2017 through May 2017. 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.

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<sup>1</sup> See 7 CFR 253.8 for the corresponding federal regulations.

MDHHS did not present verification of a written misreporting by Respondent. Generally, MDHHS will have difficulty in clearly and convincingly 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; 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**.

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**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**

Lindsay Miller  
MDHHS-Genesee-UnionSt-Hearings

**Petitioner**

MDHHS-OIG-Hearings

**Respondent**

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

M Shumaker  
Policy Recoupment  
C Gardocki  
MAHS