



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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

Date Mailed: October 23, 2018  
MAHS Docket No.: 18-007122  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED] [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Jeffrey Kemm

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION**

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on October 18, 2018, from Lansing, Michigan. The Department was represented by Patrick Cousineau, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] [REDACTED] did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

**ISSUES**

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from FAP?

**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 August 17, 2015, the Department issued a Redetermination to Respondent to obtain information from Respondent to review her eligibility for FAP. Exhibit A, p. 46-51.
2. On September 6, 2015, Respondent returned the completed Redetermination to the Department. In the Redetermination, Respondent answered "No" when asked, "does anyone in your household have income?" Respondent signed her application and thereby affirmed that she understood the questions and that she provided true and complete information. Exhibit A, p. 46-51.

3. From July 2015 through September 2015, Respondent earned \$[REDACTED] from Insurance Staffers. This is the amount of quarterly wages that was reported to the State. Exhibit A, p. 80.
4. From July 2015 through September 2015, the Department issued Respondent a FAP benefit of \$511.00 per month based on a reported income of \$[REDACTED] and a group size of 3.
5. Respondent did not report to the Department that she had income from [REDACTED].
6. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her responsibilities to the Department.
7. The Department investigated Respondent's case and determined that it overissued Respondent FAP benefits because she had unreported income.
8. On June 26, 2018, the Department's OIG filed a hearing request to establish that Respondent committed an IPV. Exhibit A, p. 1.
9. The OIG requested that Respondent be disqualified from FAP for 12 months for a first IPV.
10. A notice of hearing was mailed to Respondent at her last known address and was not returned by the United States Postal Service as undeliverable.

### **CONCLUSIONS OF LAW**

The Supplemental Nutrition Assistance Program (SNAP) is a federal food assistance program designed to promote general welfare and to safeguard well-being by increasing food purchasing power. 7 USC 2011 and 7 CFR 271.1. The Department administers its Food Assistance Program (FAP) pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015. Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

### **Intentional Program Violation**

An intentional program violation (IPV) "shall consist of having intentionally: (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards." 7 CFR 273.16(c). An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. 7 CFR

273.16(e)(6). Clear and convincing evidence is evidence which is so clear, direct, weighty, and convincing that it enables a firm belief as to the truth of the allegations sought to be established. *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (citing *In re Jobes*, 108 NJ 394 (1987)).

In this case, I find that the Department has not met its burden. The Department alleged that Respondent misrepresented or withheld information from the Department when she failed to report her employment and income to the Department. However, the Department did not present sufficient evidence to establish that it instructed Respondent to report her employment and income to the Department. Thus, the Department did not establish that Respondent knew she was supposed to report her employment and income to the Department. Therefore, Respondent's failure to report her employment and income cannot be considered an intentional program violation because there is no evidence that Respondent knew she was supposed to report such a change to the Department.

The Department presented a [REDACTED] 2014 application for Family Independence Program (FIP) and Medical Assistance (MA) as well as a [REDACTED] 2016 application for MA. Both of these applications contained reporting instructions, but the applications were for different programs than the program the Department asked for disqualification for. The Department asked for a disqualification for FAP, and the Department did not present any evidence to establish that it provided Respondent with reporting instructions when Respondent applied for FAP. A reasonable person may not have known that instructions she received when she applied for FIP or MA also applied to her FAP.

The Department also presented a wage report showing that Respondent had wages during the third quarter of 2015. The Department asserted that Respondent should have reported that she had income when she returned the completed Redetermination on September 6, 2015, because the wage report showed she had wages during the third quarter (which included July through September 2015). The Department's evidence was insufficient to establish that Respondent had wages she should have reported because the Department only produced evidence of quarterly wages. The Department did not present any evidence to establish when Respondent earned the wages during the quarter. It is entirely possible that Respondent earned all of her wages sometime in the third quarter after she provided her completed Redetermination to the Department. Thus, the Department's evidence does not establish that Respondent had income that she should have reported on her September 6, 2015, Redetermination.

For these reasons, I must find that the Department has not established by clear and convincing evidence that Respondent committed an intentional program violation.

### **Disqualification**

In general, individuals found to have committed an intentional Program violation through an administrative disqualification hearing shall be ineligible to participate in the

Program: (i) for a period of 12 months for the first violation, (ii) for a period of 24 months for the second violation, and (iii) permanently for a third violation. 7 CFR 273.16(b). Only the individual who committed the violation shall be disqualified – not the entire household. 7 CFR 273.16(b)(11).

In this case, the Department did not establish that Respondent committed an intentional program violation, so Respondent is not disqualified from FAP.

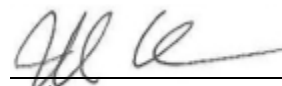
### **DECISION AND ORDER**

The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has not established, by clear and convincing evidence, that Respondent committed an IPV.
2. Respondent should not be disqualified from FAP.

IT IS ORDERED THAT Respondent shall not be disqualified from FAP.

JK/nr



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Jeffrey Kemm  
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**

OIG  
PO Box 30062  
Lansing, MI  
48909-7562

Wayne 17 County DHHS- via electronic  
mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

**DHHS**

Tara Roland 82-17  
8655 Greenfield  
Detroit, MI  
48228

**Respondent**

[REDACTED]  
[REDACTED], MI  
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