



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: November 21, 2018
MAHS Docket No.: 18-007654
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 November 7, 2018, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by Chris Tetloff, regulation agent with the Office of Inspector General. Respondent appeared and testified. Marsha Anthony, Petitioner's mother, testified on behalf of Petitioner.

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 April 1, 2016, Respondent electronically submitted to MDHHS an application for Food Assistance Program (FAP) benefits. Boilerplate application language stated that clients are to report changes in income to MDHHS within 10 days. (Exhibit A, pp. 12-28.)
2. On April 1, 2016, MDHHS mailed Respondent a Notice of Case Action approving Respondent for FAP benefits beginning April 2016. 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. A Change Report mailed with the Notice of Case Action stated that clients could use the form to report changes. (Exhibit A, pp. 29-34.)

3. From June 10, 2016, through October 13, 2017, Respondent received ongoing biweekly employment income from an employer (hereinafter, "Employer"). (Exhibit A, pp. 45-55.)
4. On January 25, 2017, MDHHS mailed Respondent a Wage Match Client Notice concerning Respondent's employment income from Employer. (Exhibit A, pp. 35-36.)
5. On March 16, 2017, Respondent submitted a Redetermination to MDHHS. Respondent reported employment income from Employer. (Exhibit A, pp. 37-44)
6. On an unspecified date, MDHHS established that Respondent received \$[REDACTED] in over-issued FAP benefits over the period from August 2016 through March 2017. The basis of the overissuance was Respondent's failure to report employment income. (Exhibit A, pp. 54-72.)
7. On July 18, 2018, MDHHS requested a hearing to establish that Respondent committed an IPV justifying imposing a 1-year disqualification period. (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 previously established an OI of \$[REDACTED] against Respondent based on unreported employment income. MDHHS requested a hearing to establish that Petitioner's failure to report employment income was an IPV which justified imposing a disqualification period.

The types of recipient claims (i.e., overissuances) are those caused by agency error, unintentional recipient claims, and IPV. 7 CFR 273.18(b). An 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 clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an IPV. 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence must be strong enough to cause a clear and firm belief that the proposition is true; it is more than proving that the proposition is probably true. 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. 7 CFR 273.12(a)(2). Changes must be reported within 10 days of receiving the first payment reflecting the change. *Id.*

The evidence established that Respondent received an OI of FAP benefits due to unreported income. For an IPV to be established, MDHHS must clearly and convincingly establish that Respondent intentionally failed to report employment income.

MDHHS presented an application and Notice of Case Action which included boilerplate language stating that clients are to report changes of income to MDHHS within 10 days. The inclusion of reporting language in the documents completed and/or mailed to Respondent is evidence that Respondent was aware of the need to report changes in income. To clearly and convincingly establish intent, it must be established that Respondent read the boilerplate language, absorbed the language, retained the information, and purposely chose to not ignore the requirement to report a change in income. The evidence did not establish whether Respondent did anything except receive notice of the boilerplate language.

MDHHS testimony indicated a Notice of Case Action mailed to Respondent included a budget summary which listed factors of Respondent's FAP eligibility; one listed factor was employment income of \$0. MDHHS contended that Respondent should have been aware of a need to report income because she should have known that her FAP eligibility was based on \$0 employment income. Inclusion of a budget summary on the second page of a Notice of Case Action does not guarantee that Respondent read the notice beyond the first page which stated that FAP benefits were approved. A budget summary which Respondent may or may not have read is not clear and convincing evidence of Respondent's intent to not reporting employment income.

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. 7 CFR 253.8 (b) and BAM 725 (January 2016), p. 16.

Without a finding that a client committed an IPV, an IPV disqualification cannot follow. Thus, MDHHS is denied their request to establish a 1-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 1-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

Lacey Whitford
MDHHS-Isabella-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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