



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
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Date Mailed: January 8, 2019
MAHS Docket No.: 18-010029
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 December 10, 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 Amy Harrison, 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 disqualifying 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 June 30, 2014, Respondent submitted to MDHHS an application for Food Assistance Program (FAP) benefits. Household members included Respondent's spouse (hereinafter, "Spouse"). Boilerplate language stated that

Respondent's signature was certification that an Informational Booklet was reviewed.¹ (Exhibit A, pp. 69-90.)

2. On July 1, 2014, MDHHS mailed Respondent a Notice of Case Action (Exhibit A, pp. 37-38) informing Respondent of an approval of FAP benefits beginning June 2014. A budget summary listed \$0 earned income as factored.
3. On July 16, 2014, MDHHS mailed Respondent a Notice of Case Action (Exhibit A, pp. 39-40) informing Respondent of an approval of FAP benefits beginning August 2014. A budget summary listed \$0 earned income as factored.
4. From August 15, 2014, through at least March 27, 2015, Respondent received income from an employer. (Exhibit A, pp. 49-52.)
5. On September 12, 2014, MDHHS mailed Respondent a Notice of Case Action (Exhibit A, pp. 41-42) informing Respondent of an approval of FAP benefits beginning October 2014. A budget summary listed \$0 earned income as factored.
6. On October 4, 2014, MDHHS mailed Respondent a Notice of Case Action (Exhibit A, pp. 43-44) informing Respondent of an approval of FAP benefits beginning November 2014. A budget summary listed \$0 earned income as factored.
7. From October 2014 through March 2015, Respondent received \$[REDACTED] in over-issued FAP benefits. (Exhibit A, pp. 19-31.)
8. From November 29, 2014, through March 28, 2015, Spouse received ongoing unemployment compensation (UC) income. (Exhibit A, pp. 53-56.)
9. On an unspecified date, MDHHS established a recipient claim of \$[REDACTED] in FAP benefits against Respondent.
10. On September 28, 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.)
11. Respondent has no previous IPV disqualifications.

¹ The Informational Booklet (which was not presented as an exhibit) includes language that clients are to report income changes to MDHHS within 10 days.

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 that Respondent received \$[REDACTED] in over-issued FAP benefits due to Respondent's unreported income. In the present case, MDHHS requested a hearing to establish that Respondent's failure to report employment income was an IPV which justified imposing a disqualification period.

The types of recipient claims 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).

IPV is suspected when there is **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. BAM 720 (January 2016), p. 1. 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. 7 CFR 273.12(a)(2). Changes must be reported within 10 days of receiving the first payment reflecting the change. *Id.*

MDHHS presented dozens of documents related to establishment of the over-issuance which 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 multiple Notices of Case Action which each 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 is suggestive that Respondent was aware of the need to report to MDHHS any changes in

income. MDHHS did not present direct evidence that Respondent was aware of the boilerplate language, absorbed the language, retained the information, and/or purposely chose to ignore the requirement of reporting changes in income.

Each of the Notices of Case Action mailed to Respondent included a budget summary which listed all FAP eligibility factors; one factor listed consistently was employment income of \$0. The budget summaries, if read by Respondent, is circumstantial evidence that Respondent failed to report to MDHHS income changes. The evidence does not establish that Respondent bothered to look beyond the first page of the notices which listed Respondent's benefit issuance amounts.

MDHHS did not present verification of a written misreporting by Respondent. Generally, MDHHS will have difficulty in establishing a client's clear and convincing 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 Respondent committed an IPV, an IPV disqualification cannot follow. Thus, MDHHS is 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**.

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

Barbara Hamilton
MDHHS-Lenawee-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
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[REDACTED] MI [REDACTED]

M Shumaker
Policy Recoupment
C Gardocki
MAHS