



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
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[REDACTED]

Date Mailed: April 1, 2019
MAHS Docket No.: 18-012451
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 March 27, 2019, 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 Chris Tetloff, 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.

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 2, 2015, Respondent submitted to MDHHS an application requesting 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. 12-32.

2. On June 3, 2015, MDHHS mailed Respondent a Notice of Case Action stating that Respondent was approved for FAP benefits beginning June 2015. A budget summary indicated that \$0 employment income was factored. Boilerplate language stated that clients are to report income changes to MDHHS within 10 days. A Change Report form, also mailed to Respondent, stated that Respondent could submit the Change Report or call MDHHS to report changes. Exhibit A, pp. 33-38.
3. From August 13, 2015, through January 27, 2017, Respondent received employment income from Rite Aid (hereinafter, "Employer"). Exhibit A, pp. 47-50.
4. On January 27, 2016, Respondent reported to MDHHS her employment with Employer. Respondent's specialist documented that Respondent's reporting was untimely. Exhibit A, p. 45.
5. On June 5, 2016, Respondent submitted a Redetermination form to MDHHS. Respondent reported receiving ongoing employment income from Employer. pp. 39-44.
6. From October 2015 through February 2016, Respondent received a total of \$970 FAP benefits. Exhibit A, pp. 51-52
7. On June 6, 2018, MDHHS calculated that Respondent received an overissuance (OI) of \$749 in FAP benefits from October 2015 through February 2016. The OI was calculated based on Respondent's alleged unreported income from Employer. MDHHS calculated that Respondent's actual issuances from the OI period totaled \$970 and Respondent's "correct" issuances totaled \$221. Exhibit A, pp. 53-63.
8. On an unspecified date, MDHHS established a \$749 recipient claim due to client-error against Respondent.
9. On November 28, 2018, MDHHS requested a hearing to establish that Respondent committed an IPV related to the overissuance of \$749 in FAP benefits, justifying imposing a one-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 a recipient claim against Respondent related to \$749 in over-issued FAP benefits from October 2015 through February 2016 due to Respondent's unreported income. In the present case, MDHHS requested a hearing only to establish that the overissuance was caused by Respondent's IPV.

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).

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 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.*

MDHHS presented OI budgets which calculated that Respondent received an overissuance of \$749 in 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 a Notice of Case Action which included boilerplate language stating that clients are to report changes of income to MDHHS within 10 days. A Change Report mailed with the Notice of Case Action also included language informing Respondent of a need to report changes within 10 days. MDHHS also presented an application completed by Respondent which additionally included boilerplate language stating that clients are to report changes to MDHHS within 10 days.

The inclusion of boilerplate language in documents mailed to and/or completed by Respondent 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 language, and/or purposely chose to ignore the requirement of reporting income changes.

The Notice of Case Action mailed to Respondent included a budget summary listing the budget factors used to determine Respondent's FAP eligibility. The summary listed \$0 in employment income. Again, MDHHS did not establish that Respondent read the budget summary or should have known that any changes to the listed budget factors required Respondent to report the change to MDHHS.

It is also notable that MDHHS first learned of Respondent's income change from Respondent, though Respondent's reporting was untimely. Generally, a voluntary reporting of employment income is inconsistent with a purposeful failure to report income.

MDHHS did not present evidence of a written misreporting by Respondent. Generally, MDHHS will have difficulty in clearly and convincingly establishing a client's fraudulent intent without evidence of a written misreporting. The presented circumstantial 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 MDHHS failed to establish that Respondent committed an IPV.


Individuals found to have committed an IPV shall be ineligible to receive FAP benefits. 7 CFR 273.16(b). The standard disqualification period is used in all instances except when a court orders a different period. IPV penalties are as follows: one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. *Id.* and BAM 725 (January 2016), p. 16.

Without a finding that Respondent committed an IPV, an IPV disqualification cannot follow. Thus, MDHHS is denied its 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/cg



Christian Gardocki
Administrative Law Judge
for Robert Gordon, 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

Via Email:

MDHHS-Saginaw-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

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