STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES

IN THE MATTER OF:

[redacted]

Reg. No.: 15-004761
Issue No.: 3000
Case No.: [redacted]
Hearing Date: May 19, 2015
County: Wayne-District 17

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16 and 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on May 19, 2015, from Lansing, Michigan. The Department was represented by [redacted], Regulation Agent of the Office of Inspector General (OIG).

Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

The Office of Inspector General requested this hearing based on an alleged Intentional Program Violation and overissuance of benefits due to an alleged failure to report changes in circumstances. The evidence shows the agency became aware of the unreported earned income on July 11, 2006. A hearing was requested by the Department on March 27, 2015.

Per current policy found at BAM 720:

> "Suspected IPV cases are investigated by OIG. Within 12 months, OIG will:
>
> Refer suspected IPV cases that meet criteria for prosecution to the Prosecuting Attorney.
>
> Refer suspected IPV cases that meet criteria for IPV administrative hearings to the Michigan Administrative Hearings System (MAHS).
>
> Return non-IPV cases to the RS." BAM 720, pg 12 (5-1-2014).

At the time the hearing was requested, the policy in effect read that the OIG had 18 months to refer a case for administrative hearing. BAM 720, pg 11, (7-1-2013)

In 2006, at the time the case had been referred to OIG for investigation, the policy in effect read that the OIG had 18 months to refer a case for administrative hearing. PAM 720, pg 9 (10-1-2006)

This case was referred to the OIG on December 14, 2006. Over 7 years later, the OIG referred the suspected IPV case to the Michigan Administrative Hearing System (MAHS), as the OIG felt the criteria met the requirements for an administrative hearing. The Department was unable to testify as to why the 7 year delay was necessary, but did testify that during the intervening time, the case was in the sole possession of the OIG.

As policy specifically currently requires the OIG to request an administrative hearing within 12 months of referral, (or 18 months prior to May 1, 2014) and as the OIG has failed to do so in this case, the Administrative Law Judge must first answer as to whether there is jurisdiction to hear the case in question.

After long consideration and exhaustive research, the undersigned holds that there is no jurisdiction to hear the case at hand.

In *Department of Consumer & Industry Services v Greenberg*, 231 Mich App 466; 586 NW2d 560 (1998), the Board of Optometry Disciplinary Subcommittee found against and disciplined the appellant after the filing of an administrative complaint. Citing MCL 333.16232(3), the appellant argued "that the complaint against him should have been dismissed because the subcommittee violated the requirement that it meet and impose a penalty on appellant within sixty days after receiving the hearing referee's proposal for decision."

The Michigan Court of Appeals held that the statutory section did not provide for dismissal of a complaint when the subcommittee was tardy, that there was no statutory sanction for a violation, and that the statutory scheme contemplated that delays would occur in the disciplinary process. Id. at 468-469. The Court concluded that under the circumstances the timeframe was permissive in nature despite being framed in mandatory terms and that the timeframe was primarily a guideline.

The Court held specifically that "the passage of more than sixty days, especially in the complete absence of any specific allegations of prejudice suffered by appellant, did not require dismissal of the complaint." Id. at 469.

Similarly, the Court decided in *Department of Community Health v Anderson*, 299 Mich App 591, 593-594; 830 NW2d 814 (2013), that the principles in Greenberg applied when an administrative disciplinary action was required by statute to be completed within one year of the initiation of an investigation and the penalty was not completed within this statutory timeline; in that case, appellant's request for a dismissal of the matter was denied.

Thus, based on these two decisions, a violation of time restrictions alone does not warrant a preemptory dismissal of the hearing request at hand, as there is no statutory sanction for a violation of this timeline, in either state or federal law.

However, in *Smelser v. Department of Human Services*, decided on February 27, 2014, the Michigan Court of Appeals held that the principles established in Greenberg and Anderson do not automatically allow for a cause of action to continue if statutory timelines are violated; rather, Greenberg holds that a statutory timeline violation may allow for a continued cause of action "in the complete absence of specific allegations of prejudice suffered by the appellant".

The *Smesler* Court also found that when time restrictions were not merely violated, but when there is "egregious noncompliance", there may be cause to enforce the deadlines when the "extensive and inexcusable delay is coupled with…language that absolutely precluded" further proceedings given an expired time period.

In the current case, the undersigned believes that there is no serious argument that can be made that the 7+ intervening years between the case referral to the OIG and the request for hearing constitutes anything but egregious noncompliance as contemplated by the Court in *Smelser*.

Furthermore, the policy at BAM 720 and PAM 720 cited above specifically says that the OIG **will** file a request for hearing within 18 months at the very most; the undersigned believes that this clause, phrased in the imperative tense, absolutely precludes further proceedings after that time period.

Finally, with regard to "prejudice suffered", as per *Greenberg,* given the length of time that has passed, the undersigned does not believe that any respondent could adequately mount a defense, remember precise details, or properly document what had happened, which is a clear prejudice against the respondent. Per the investigative report submitted by the Department, the OIG themselves were unable to locate documents relevant to the time period of the alleged offense, specifically due to the length of time that had passed.

Therefore, as all prongs of the tests given by the courts in *Greenberg* and *Smelser* have been met, and given that the policy in place at the time OIG received the case states that the OIG had 18 months to refer a hearing to Administrative Hearings, the Administrative Law Judge holds that policy and case law effectively prevent the case in question from being referred for hearing.

As such, the Administrative Law Judge rules that there is no jurisdiction to hear the case at hand.

Accordingly, the request for a disqualification hearing is **DISMISSED**.

Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/22/2015**

Date Mailed: **5/22/2015**

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NOTICE: The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

cc: [redacted]