



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: March 23, 2016
MAHS Docket No.: 16-000919
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on March 17, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. [REDACTED] Petitioner's case manager from [REDACTED], testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], recoupment specialist. [REDACTED], regulation agent from the Office of Inspector General, participated in the hearing but did not testify.

ISSUE

The issue is whether MDHHS properly imposed an intentional program violation (IPV) disqualification against Petitioner concerning Petitioner's FAP eligibility.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was an ongoing FAP recipient.
2. On [REDACTED], an administrative decision upheld the imposition of a 1 year IPV against Petitioner.
3. On [REDACTED], MDHHS imposed an IPV disqualification against Petitioner beginning February 2016.

4. On [REDACTED], Petitioner requested a hearing to dispute the imposition of the IPV beginning February 2016.

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).

Petitioner requested a hearing to dispute the imposition of an IPV disqualification. Petitioner did not dispute that an IPV disqualification was justified. Petitioner specifically raised concerns about when the IPV was imposed.

In their case summary, MDHHS cited one of their forms as a basis to preclude Petitioner from pursuing her hearing request. The Intentional Program Violation Client Notice reads, "A hearing will only be granted only if the reason for requesting a hearing is an incorrect computation of the reduction in your monthly benefits." MDHHS contended Petitioner's hearing request should be dismissed because Petitioner did not dispute the amount of the IPV penalty.

Citation of a MDHHS form to justify a dismissal of a hearing request is not proper. MDHHS policy dictates when hearings are authorized.

The Michigan Administrative Hearing System may grant a hearing about any of the following (see BAM 600 (October 2015), pp. 4-5):

- denial of an application and/or supplemental payments;
- reduction in the amount of program benefits or service;
- suspension or termination of program benefits or service
- restrictions under which benefits or services are provided;
- delay of any action beyond standards of promptness; or
- the current level of benefits or denial of expedited service (for Food Assistance Program benefits only).

Petitioner alleged MDHHS improperly imposed an IPV disqualification which affected her FAP eligibility in February 2016. The allegation is well within Petitioner's reasons for requesting a hearing.

[For IPV's based on FAP benefits, the] investigation disposition is completed when a DHS-826 and DHS-4350 is obtained from the client [or...] when an IPV hearing decision is issued. BAM 720 (January 2016), p. 15. OIG will send all dispositions to the recoupment specialist within 14 days of their final disposition. *Id.*

The standard disqualification period is used in all instances except when a court orders a different period... *Id.*, p. 16. [MDHHS is to] apply the following disqualification periods to recipients determined to have committed IPV: one year for the first IPV, two years for the second IPV and lifetime for the third IPV. *Id.*

Analysis of the dispute merits some background facts that were not disputed. Petitioner was an ongoing FAP benefit around the time of September 2014. MDHHS stopped Petitioner's FAP eligibility beginning October 2014. On [REDACTED], an administrative hearing was held (without Petitioner). The subsequent hearing decision (Exhibit 1, pp. 4-8) found that Petitioner committed her first IPV, resulting in a 12 month disqualification period.

Petitioner contended MDHHS imposed an IPV beginning November 2014. Petitioner reapplied for FAP benefits on [REDACTED]. Petitioner testified she fully expected she would not receive FAP benefits until November 2015, the first month when she thought she could again receive FAP benefits. Petitioner testified she was pleasantly surprised when MDHHS approved her application and issued FAP benefits, at least until February 2016.

MDHHS testimony indicated Petitioner's FAP eligibility stopped in 2014 due to Petitioner's failure to complete a redetermination. MDHHS testified that Petitioner could have received FAP benefits in November 2014 and for several additional months had Petitioner reapplied for FAP benefits. MDHHS testimony emphasized that an IPV disqualification had not yet been imposed. MDHHS indicated Petitioner's IPV was officially imposed beginning February 2016. Thus, MDHHS contended, Petitioner is aptly disqualified from receiving FAP benefits from February 2016 through January 2017.

MDHHS presented an Intentional Program Violation Client Notice (Exhibit 1, pp. 1-2) dated [REDACTED]. The notice stated Petitioner was disqualified from receiving FAP benefits from February 2016 through January 2017. MDHHS testimony indicated no other IPV notices were issued and no other IPV disqualification period was imposed.

Petitioner testimony insisted she received some notice indicating an IPV beginning in November 2014. Petitioner testified she had such a document but left it at home. Petitioner was given one day to submit her proof. Petitioner timely presented various documents.

Petitioner presented a letter from a supervising administrative law judge (Exhibit A, p. 6) dated [REDACTED]. The letter informed Petitioner that an Authorization for Electronic Delivery (Exhibit A, p. 7) was being returned because it was submitted (presumably by Petitioner) without an email address. This letter is not indicative that an IPV was imposed against Petitioner before February 2016.

Petitioner presented a letter from a regulation agent (Exhibit A, p. 1) dated [REDACTED], [REDACTED]. The letter stated Petitioner committed an IPV by trafficking FAP benefits. The

letter went on to state that an Intentional Program Violation Repayment and Agreement was enclosed. Petitioner was advised to "Please read the enclosed forms and sign" them.

It is concerning that the letter instructed Petitioner to sign forms conceding the IPV (albeit with a recommendation of reading the forms first) without further caveats (such as if Petitioner agrees that an IPV occurred for the amount alleged). The language of the letter could induce clients to admit in writing that an IPV occurred. It was not disputed that Petitioner did not sign and return documents admitting an IPV was committed.

It is also concerning that the presented regulation agent letter essentially stated Petitioner committed an IPV. The letter's language was indicative that an IPV was established. The letter's language, by itself, could mislead a client into believing that an IPV disqualification had been imposed.

It is notable that the letter was dated in July 2014. Petitioner continued to receive FAP benefits for at least 2 more months. Thus, the letter was not very close in time to the time MDHHS stopped Petitioner's FAP eligibility.

It is also notable that Petitioner should have received redetermination materials in September 2014. It was not established that MDHHS mailed Petitioner redetermination documents, however, MDHHS is known to automatically send redetermination documents to clients. After MDHHS testimony indicated redetermination documents were mailed to Petitioner, Petitioner did not deny receiving them. It is found Petitioner received FAP redetermination documents in or near to September 2014. The issuance of such documents is indicative that Petitioner should have known an IPV had not yet been imposed against her.

Petitioner presented a For Waiver of Disqualification Hearing (Exhibit A, pp. 2-3). The form stated MDHHS believes Petitioner committed an IPV and they intend to pursue a disqualification hearing. The form goes on to inform Petitioner that she may give up her right to a hearing by signing the document and a repayment agreement.

An Intentional Program Violation Repayment Agreement (Exhibit A, pp. 4-5) dated [REDACTED] was presented. The document stated Petitioner trafficked \$645.82 in FAP benefits. The form further stated Petitioner must sign the form or further action will be taken.

The For Waiver of Disqualification Hearing and Intentional Program Violation Repayment Agreement forms are required forms as part of the process of establishing an IPV (see BAM 720). Petitioner's receipt of the forms is not indicative that MDHHS misled her on when an IPV disqualification period was imposed.

A Hearing Decision upholding an IPV was issued on [REDACTED]. It would be expected that MDHHS would have imposed the disqualification against Petitioner in the

following weeks. It is very curious that MDHHS inexplicably took over 12 months to impose the IPV. MDHHS could not explain the lengthy lapse in time between the issuance of the administrative hearing decision and the month when an IPV disqualification began.

Though some of MDHHS' actions were irregular, the actions were not indicative of imposition of an IPV before February 2016. Based on presented evidence, it is found MDHHS properly imposed an IPV disqualification against Petitioner beginning February 2016.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly imposed an IPV disqualification against Petitioner for the months from February 2016 through January 2017. The actions taken by MDHHS are **AFFIRMED**.

CG/hw



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) 335-6088; 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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]