



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: September 30, 2016  
MAHS Docket No.: 16-005340  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Eric J. Feldman**

**ORDER OF DISMISSAL**

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 [REDACTED], from Detroit, 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).

On [REDACTED], the Department's OIG requested a prior Intentional Program Violation (IPV) request alleging Respondent's failure to report moving out of Michigan, as well as earnings for the time period of [REDACTED].

On [REDACTED] Administrative Law Judge (ALJ) Robert J. Chavez issued a Hearing Decision for IPV following a telephone hearing on [REDACTED], (Reg. No. 15-010952). ALJ Chavez's decision found the following: (i) Respondent did not commit an IPV by clear and convincing evidence; (ii) Respondent did not receive an OI of program benefits in the amount of \$ [REDACTED] in Food Assistance Program (FAP) benefits; and (iii) the Department was ordered to delete the OI and cease any recoupment action (Reg. No. 15-010952).

Subsequent to ALJ Chavez's decision, on [REDACTED], the Department's OIG requested another FAP IPV hearing for the undersigned ALJ to address, now alleging Respondent failed to report earned income for the time period of [REDACTED]. Exhibit A, pp. 1 and 3.

Based on the foregoing information, the undersigned ALJ lacks the jurisdiction to address the Department's hearing request under the doctrine of *res judicata*.

The doctrine of *res judicata* applies to administrative determinations which are adjudicatory in nature where a method of appeal is provided and where it is clear that it was the legislative intention to make the determination final in the absence of an appeal. *O'Keefe v Dep't of Soc Servs*, 162 Mich. App. 498, 509; 413 N.W.2d 32 (1987).

Furthermore, in *Dart v Dart*, 460 Mich. 573, 586; 597 N.W.2d 82 (1999), the Michigan Supreme Court stated the following about *res judicata*:

Res judicata bars a subsequent action between the same parties when the evidence or essential facts are identical. *Eaton Co. Bd. of Co. Rd. Comm'rs v. Schultz*, 205 Mich.App. 371, 375; 521 N.W.2d 847 (1994). A second action is barred when (1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies. *Id.* at 375-376; 521 N.W.2d 847.

Michigan courts have broadly applied the doctrine of *res judicata*. They have barred, not only claims already litigated, but every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not. *Gose v. Monroe Auto Equipment Co.*, 409 Mich. 147, 160-163; 294 N.W.2d 165 (1980); *Sprague v. Buhagiar*, 213 Mich.App. 310, 313; 539 N.W.2d 587 (1995).

In this case, the Department is barred by *res judicata* from pursuing an IPV against Respondent based on his alleged failure to report earned income. The Department was aware of Respondent's alleged failure to report earned income at the time of ALJ Chavez's hearing and should have raised the claim at that time, but did not. This second action against Respondent is barred because (i) the first action was decided on the merits, (ii) the matter contested in this second action, the failure to report income, was or could have been resolved in the first hearing with ALJ Chavez, and (iii) both actions involve the same parties. Moreover, the time period in which the Department alleges this second action occurred ( [REDACTED] ), fell within the same time period that ALJ Chavez addressed. See Exhibit A, pp. 1 and 3. Finally, the Department had the opportunity to appeal the prior decision to circuit court. BAM 600 [REDACTED] ), pp. 38-39. The Department was notified of this right in ALJ Chavez's decision, and there was no evidence of doing so.

Because the matter contested in this second action, the failure to report income, was or could have been resolved in the first hearing and the Department did not appeal, the undersigned ALJ has no legal authority to conduct a hearing on this second action. The Department is barred by *res judicata*.

**NOW, THEREFORE, IT IS ORDERED that:**

The request for hearing in the above-captioned matter is hereby **DISMISSED** for lack of jurisdiction.

EJF/jaf



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**Eric J. Feldman**

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.

**DHHS**

[REDACTED]

**Petitioner**

[REDACTED]

**Respondent**

[REDACTED]

**Via email**

[REDACTED]