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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: June 12, 2018
MAHS Docket No.: 17-016670
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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 May 24, 2018, from Detroit, Michigan. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled time. The Michigan Department of Health and Human Services (MDHHS) was represented by Allyson Carneal, regulation agent, with the Office of Inspector General. Respondent did not appear for the hearing.

ISSUE

The issue is whether MDHHS established that Respondent committed an intentional program violation (IPV) which justifies imposing an IPV disqualification against 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 August 19, 2015, Respondent submitted to MDHHS an application for FAP benefits. Respondent's application reported no employment income. Boilerplate application language informed clients to report changes in income within 10 days. (Exhibit A, pp. 11-29)

2. On September 10, 2015, MDHHS approved Respondent for FAP benefits from September 2015 and mailed Respondent a Notice of Case Action. The notice included a budget summary listing all factored information; Respondent's factored employment income was \$0. (Exhibit A, pp. 30-33) The mailing also included a Change Report which informed Respondent to report any changes to MDHHS within 10 days. (Exhibit A, pp. 34-35)
3. On February 28, 2016, Respondent submitted an application to MDHHS requesting FAP benefits (and other programs). Respondent reported being employed with Employer. (Exhibit A, pp. 39-75)
4. On April 1, 2016, MDHHS approved Respondent for ongoing FAP benefits and mailed Respondent a Notice of Case Action. The notice included a budget summary listing all factored information; Respondent's factored employment income was \$0. (Exhibit A, pp. 76-82) The mailing also included a Change Report which informed Respondent to report any changes to MDHHS within 10 days. (Exhibit A, pp. 83-84)
5. On July 1, 2016, Respondent signed a Redetermination and returned it to MDHHS a few days later. Respondent reported that she works only during the school year and not in summer. (Exhibit A, pp. 85-90)
6. On August 2, 2016, MDHHS mailed Respondent a Wage Match Notice concerning income from a public school district (hereinafter "Employer"). Respondent returned the document a few days later writing that, "I only work during the school year." Respondent's submission also included a list of her employment income from Employer from September 25, 2015, through June 17, 2016. (Exhibit A, pp. 36-38)
7. On January 12, 2017, MDHHS received a Wage Match Client Notice from Respondent which listed pays from Employer from April 8, 2016, through December 16, 2016 (no pays from June 17, 2016, to September 9, 2016, were listed). (Exhibit A, pp. 91-92)
8. On an unspecified date, MDHHS calculated Respondent received an overissuance of \$ [REDACTED] from November 2016 through June 2016, due to unreported employment income. (Exhibit A, pp. 96-109)
9. From November 2016 through January 2017, Respondent received an overissuance of \$ [REDACTED] due to unreported employment income. (Exhibit A, pp. 110-118)
10. On November 28, 2017, MDHHS requested a hearing against Respondent to establish an IPV disqualification of one year based on Respondent's alleged failure to report employment income.

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' Hearing Summary and testimony alleged that Respondent committed an IPV by failing to report and/or misreporting employment income which resulted in an OI of FAP benefits. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 4-5) dated November 20, 2017, sent to Respondent as part of MDHHS' prehearing procedures.

An IPV is established by a "benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his authorized representative." Bridges Program Glossary (October 2015), p. 36. A suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities. BAM 720 (January 2016), p. 1.

IPV is suspected when there is **clear and convincing** [emphasis added] evidence that the client or CDC provider has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. *Id.* 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. BAM 105 (April 2016), p. 11. Changes must be reported within 10 days of receiving the first payment reflecting the change. *Id.* Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015), p. 8.

MDHHS presented documentation from Employer which stated that Respondent received employment income from September 25, 2015, through June 17, 2016, and from April 8, 2016, through June 17, 2016, and September 9, 2016, through

December 16, 2016. The evidence sufficiently established periods of employment income for Respondent.

MDHHS presented OI budgets calculating that Respondent received OIs of FAP benefits for \$████ from November 2015 through February 2016, \$████ from February 2016 through June 2016 and \$████ from November 2016 through January 2017. MDHHS testimony credibly indicated that all calculated OIs were established against Respondent and the OIs were due to unreported employment income. The evidence established that Respondent failed to report employment income which resulted in an OI. MDHHS further alleged that the OI was caused by Respondent's purposeful misreporting and/or failure to report employment income.

MDHHS alleged that Respondent misreported her employment income. MDHHS presented reporting documents from Respondent which were dated August 19, 2015; February 28, 2016; and July 1, 2016; each document reported no employment income. MDHHS did not verify that Respondent received ongoing employment income as of any of the dates when she reported otherwise. The evidence did not support a finding that Respondent misreported employment income.

MDHHS alternatively contended that Respondent's pattern of failing to report employment income was consistent with an intentional failure to report. It was established that Respondent received an OI of over \$████ in FAP benefits due to unreported income. MDHHS also presented multiple notices sent to Respondent reminding her of a need to report income changes within 10 days. These considerations were consistent with purposely failing to report employment income.

Respondent worked as a bus driver for a school district (see Exhibit A, p. 92). Respondent repeatedly reported to MDHHS that she does not work during summer. Respondent's pay history also indicated there were periods during a school year when she was not employed.

Notably, Respondent did report her employment income to MDHHS on her application dated February 28, 2016. Respondent also reported to MDHHS on July 1, 2016, that she had employment but did not receive income during summer months. Respondent's reporting to MDHHS was indicative that MDHHS was aware of Respondent's employment circumstances, and still an OI occurred from February 2016 through January 2017 (though MDHHS did not appear to have knowledge of Respondent's income before February 2016).

Based on the evidence, MDHHS did not clearly and convincingly establish that Respondent intentionally failed to report and/or misreported employment income. Thus, MDHHS failed to establish that Respondent committed an IPV.

The standard disqualification period is used in all instances except when a court orders a different period. BAM 725 (January 2016), p. 16. [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. *Id.*

Without a finding that a client 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

Carisa Drake
MDHHS-Calhoun-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED] [REDACTED]

M Shumaker
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MAHS