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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: July 3, 2018
MAHS Docket No.: 18-000486
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 June 28, 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 Meghan Kerr, 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 January 29, 2015, Respondent electronically submitted to MDHHS an application for FAP benefits. Respondent reported employment income for himself. Respondent's reported household also included Respondent's brother, ██████████ (hereinafter "Brother") and an unrelated FAP group member named ██████████ (hereinafter "Member"). Boilerplate language stated that the client's signature is certification that a section of an Informational Booklet was

read (which includes information that clients are to report changes to MDHHS within 10 days). (Exhibit A, pp. 12-28)

2. On February 18, 2015, MDHHS mailed a Notice of Case Action approving Respondent for FAP benefits. Respondent's FAP eligibility factored Respondent's \$█/month in employment income. The notice stated that Respondent was to report employment income which exceeded \$2,144/month. Respondent's FAP group included Brother and Member. (Exhibit A, pp. 29-32)
3. On February 18, 2015, MDHHS mailed notice that a Semi-Annual Contact Report (SACR) would be mailed to Respondent six months into the benefit period. Boilerplate language also advised Respondent that employment income changing by \$100 would have to be reported on the SACR. (Exhibit A, p. 33)
4. From March 24, 2015, through July 21, 2015, Brother received ongoing employment income. (Exhibit A, pp. 41-43)
5. On May 20, 2015, MDHHS received Respondent's SACR. Respondent reported that household income had not changed by more than \$100. Respondent also reported that no other persons have started employment. (Exhibit A, pp. 34-35)
6. On June 18, 2015, MDHHS approved Respondent's FAP eligibility from July 2015. Respondent's FAP eligibility was based on Respondent's \$█ in employment income and no other income. (Exhibit A, pp. 36-39)
7. From July 9, 2015, through February 4, 2016, Member received ongoing employment income. (Exhibit A, pp. 44-46)
8. From May 2015 through December 2015, Respondent received \$█/month in FAP benefits. (Exhibit A, p. 64)
9. On February 23, 2017, MDHHS calculated that Respondent received an OI of \$█ in FAP benefits from May 2015 through July 2015 due to Brother's unreported employment income. MDHHS also calculated that Respondent received an OI of \$█ in FAP benefits from September 2015 through December 2015 due to Member's unreported employment income. (Exhibit A, pp. 65-80)
10. On January 9, 2018, MDHHS requested a hearing to establish that Respondent committed an IPV justifying imposing a 1-year disqualification period stemming from overissuances of \$█ from May 2015 through July 2015 and \$█ from September 2015 through December 2015. (Exhibit A, p. 1)
11. As of the hearing date, Respondent has no known previous IPV disqualification.

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 intentionally failing to report exceeding SR income limits resulting in already established OIs of FAP benefits \$████ from May 2015 through July 2015 and \$████ from September 2015 through December 2015. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 6-7) sent to Respondent as part of MDHHS' prehearing procedures.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. Recoupment is a MDHHS action to identify and recover a benefit overissuance. BAM 700 (January 2016), pp. 1-2.

FAP groups with countable earnings, as currently are assigned to the simplified reporting (SR) category. This reporting option increases FAP participation by employed households and provides workload relief. Simplified reporting groups are required to report only when the group's actual gross monthly income (not converted) exceeds the SR income limit for their group size. No other change reporting is required. If the group has an increase in income, the group must determine their total gross income at the end of that month. If the total gross income exceeds the group's SR income limit, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. BAM 200 (December 2013), p. 1.

MDHHS initially alleged that Respondent committed an IPV by failing to report that Respondent failed to report that SR income limits were exceeded in March 2015. Brother began employment in March 2015. Based on Brother's gross earnings (see Exhibit A, p. 43). Member's gross earnings, and Respondent's ongoing income of \$████ Respondent's FAP group did not exceed SR income limits until July 2015. After factoring 10 days for Respondent to report the income, 10 days for MDHHS to process the change, and 12 days for the change to be effective, Respondent's FAP eligibility should not have been affected until September 2015.

During the hearing, MDHHS amended the alleged IPV basis to Respondent's failure to accurately report employment information on a SACR received by MDHHS on May 20, 2015, As of the date of SACR, Brother's recently started employment income would have caused more than a \$100 change in income from the amount of income budgeted

by MDHHS; Respondent's SACR reported otherwise. Respondent's SACR also reported that no persons had started employment; this was also a misreporting. Had Respondent reported Brother's employment on the SACR, MDHHS could have affected Respondent's eligibility from July 2015 (though this decision cannot address the already established OI for May 2015 and June 2015).

It is also notable that Respondent failed to timely report Member's employment earnings. Member began work in July 2015 and no income was reported to MDHHS for Member through December 2015.

Respondent's misreporting on a SACR combined with Respondent's failure to report other income from Member is clear and convincing evidence that Respondent intentionally failed to report income for the purpose of receiving an OI of benefits. Thus, MDHHS established an IPV by Respondent.

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.*

MDHHS did not allege that Respondent previously committed an IPV. Thus, a one-year disqualification period is proper.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent committed an IPV justifying a one-year disqualification period. The MDHHS request to establish an IPV disqualification against Respondent is **APPROVED**.

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

Petitioner

MDHHS-OIG-Hearings

DHHS

Sheila Crittenden
MDHHS-Wexford-Missaukee-Hearings

Respondent

[REDACTED]
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[REDACTED] MI [REDACTED]

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