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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.: 18-000880
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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 December 7, 2015, Respondent electronically submitted to MDHHS an application for FAP benefits. Respondent's reported household also included a spouse (hereinafter "Spouse"). Respondent reported ongoing employment for Spouse. 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. 12-34)

2. On December 8, 2015, MDHHS mailed a Notice of Case Action approving Respondent for FAP benefits. Respondent's FAP eligibility factored \$ [REDACTED] /month in employment income. The notice stated that Respondent was to report when her group's monthly employment income exceeded \$ [REDACTED] /month. (Exhibit A, pp. 35-39)
3. On December 8, 2015, MDHHS mailed Respondent a Simplified Six-Month Review which informed Respondent 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. 40)
4. From February 9, 2016, through June 17, 2016, Respondent received ongoing employment income. (Exhibit A, pp. 41-43) Based on Respondent's gross earnings, Respondent's and Spouse's income exceeded SR reporting limits in February 2016.
5. In April 2016 and May 2016, Respondent received \$ [REDACTED] /month in FAP benefits. (Exhibit A, p. 47)
6. On March 23, 2017, MDHHS calculated that Respondent received an OI of \$ [REDACTED] /month (\$ [REDACTED] total) in FAP benefits for April 2016 through May 2016 due to Respondent's unreported employment income. (Exhibit A, pp. 48-52)
7. On January 30, 2018, MDHHS requested a hearing to establish that Respondent committed an IPV justifying imposing a 1-year disqualification period due to failing to report employment income exceeding simplified reporting limits. (Exhibit A, p. 1)
8. 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 which resulted in an already established OI of FAP benefits of \$ [REDACTED] from April 2016 through May 2016. 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.

Respondent's gross income exceeded simplified reporting income limits in February 2016. Respondent's reporting obligation to report exceeding SR limits would have begun on March 1, 2016. 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 May 2016. This decision cannot reduce a previously established an OI, however, it is notable that MDHHS' allegation that Respondent committed an IPV only resulted in an OI for May 2016.

MDHHS presented various documents with language informing Respondent of an obligation to report income exceeding simplified reporting limits. Despite such language in mailings, the documents do not ensure that a client would not forget to report. Inclusion of boilerplate language also does not ensure that Respondent bothered reading the boilerplate language to become aware of reporting requirements.

The evidence established that Respondent received a true overissuance of \$ [REDACTED] in FAP benefit for one month. Neither the OI amount nor the duration are so substantial that a clear and convincing intent to not report income can be inferred.

MDHHS did not present verification of a written misreporting by Respondent. Generally, MDHHS will have difficulty in establishing a client's purposeful failure to report information without evidence of misreporting. Presented evidence was not persuasive in overcoming the general rule.

Based on the evidence, MDHHS did not clearly and convincingly establish that Respondent intentionally failed to report employment income. Thus, it is found that Respondent did not commit 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 will be 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

Petitioner

MDHHS-OIG-Hearings

DHHS

Sheila Crittenden
MDHHS-Wexford-Missaukee-Hearings

Respondent

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