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GOVERNOR

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

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DIRECTOR

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Date Mailed: July 2, 2018
MAHS Docket No.: 18-001469
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION FOR
INTENTIONAL PROGRAM VIOLATION AND OVERISSUANCE**

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 27, 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 Ryan Sevenski, 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 July 16, 2010, Respondent electronically submitted to MDHHS an application for FAP benefits. Boilerplate language stated that the client's signature is certification that an information booklet was read (which includes information that clients are to report changes to MDHHS within 10 days). (Exhibit A, pp. 11-25)

2. On July 30, 2010, MDHHS approved Respondent's ongoing FAP eligibility and mailed Respondent a Notice of Case Action. Boilerplate language stated that clients are to report changes in income and address within 10 days. A Change Report mailed with the Notice of Case Action also included language that clients are to report to MDHHS changes within 10 days. (Exhibit A, pp. 26-32)
3. From October 7, 2010, through June 12, 2011, Respondent received from an employer (hereinafter "Employer") ongoing gross employment income exceeding \$ [REDACTED] (Exhibit A, pp. 34-35)
4. From December 2010 through June 2011, Respondent received a total of \$ [REDACTED] in FAP benefits. (Exhibit A, p. 51)
5. On June 7, 2012, MDHHS learned of Respondent's income from Employer. (Exhibit A, p. 34)
6. On July 5, 2012, MDHHS calculated that Respondent received an OI of \$ [REDACTED] from December 2010 through June 2011 due to Respondent's unreported employment income. (Exhibit A, pp. 36-50)
7. On February 14, 2018, MDHHS requested a hearing to establish that Respondent received an OI of \$ [REDACTED] in FAP benefits from December 2010 through June 2011. MDHHS also requested a hearing to establish that Respondent committed an IPV justifying imposing a 1-year disqualification period.
8. During the hearing, MDHHS verbally withdrew their request to establish an OI.
9. As of the date of hearing, Respondent had no known history of IPV's.

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 received an OI of \$ [REDACTED] in FAP benefits from December 2010 through June 2011 due to unreported employment income. MDHHS testimony indicated that an OI was previously established and establishing an OI was superfluous. MDHHS' hearing request will be dismissed

concerning the request to establish an OI. MDHHS also requested a hearing to establish an IPV disqualification against Respondent.

An IPV is 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; see also 7 CFR 273(e)(6).

IPV is suspected when there is **clear and convincing** 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. Changes in income must be reported within 10 days of receiving the first payment reflecting the change. BAM 105 (January 2015), p. 7.

MDHHS alleged that they learned of Respondent's employment income through their own reports and not from Respondent; presented evidence did not suggest otherwise. This consideration supports that Respondent failed to report employment income to MDHHS.

MDHHS alleged that Respondent received an OI based on unreported employment income. Presented OI budgets deprived Respondent of a 20% income credit for reporting employment income. BEM 556 states that clients who fail to report employment income are not entitled to the credit. As an OI was already established against Respondent (presumably based on presented budgets), it can be accepted that Respondent failed to report receipt of employment income to MDHHS. For an IPV to be established, MDHHS must establish that Respondent's failure to report employment income was clearly and convincingly intentional.

MDHHS presented multiple documents with boilerplate language informing Respondent of a need to report changes within 10 days. The evidence was supportive that Respondent was given instruction of clear and correct reporting requirements.

Consideration was given to whether Respondent's amount of income is relevant to establishing Respondent's intent in failing to report employment income. Respondent's FAP eligibility was established at a time when Respondent had \$0 income. Respondent's FAP eligibility remained unchanged after Respondent began employment which garnered him more than \$[REDACTED] in less than 12 months; the income was substantial enough that Respondent would have been completely ineligible to receive FAP benefits had MDHHS factored Respondent's income. Respondent's employment income was substantial enough that Respondent should have been aware that reporting his income would render him ineligible for FAP benefits. This consideration is supportive in finding that Respondent's failure to report income was intentional.

Respondent's substantial income during the OI period and multiple documents warning Respondent to report changes clearly and convincingly established that Respondent intentionally failed to report employment income which led to an OI of benefits. Thus, MDHHS established 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.*


MDHHS did not allege 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 withdrew their request to establish an OI against Respondent. Concerning MDHHS' request to establish an OI, MDHHS' hearing request is **DISMISSED**.

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

DHHS

Laura Bensinger
MDHHS-Eaton-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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

M Shumaker
Policy Recoupment
C Gardocki
MAHS