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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 24, 2018
MAHS Docket No.: 18-003234
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 July 18, 2018, from Detroit, Michigan. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled hearing 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 by clear and convincing evidence that Respondent committed an intentional program violation (IPV) which justifies imposing a 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 ██████████ 2007, Respondent's spouse (hereinafter "Spouse") was convicted of "CNTRL SUB POSSESS <25 GRM" under MCL 333.7403(2)(a)(v). (Exhibit A, p. 11)
2. On ██████████ ██████████ 2016, Spouse reported to MDHHS that he married Respondent and was a member of her household. (Exhibit A, pp. 12-14)

3. On [REDACTED] 2016, Spouse was convicted of "DEL/MANUF CONTROL SUB-METH/ECS" under MCL 333.7401(2)(b)(i). The offense was committed on March 22, 2016. (Exhibit 15-17)
4. On September 23, 2015, Respondent submitted to MDHHS a Redetermination. Respondent answered "No" in response to questions asking if anyone was convicted of a drug felony and if anyone was convicted of a drug felony more than once. (Exhibit A, pp. 18-23)
5. On December 27, 2016, Respondent submitted to MDHHS a Redetermination. Respondent answered "No" in response to questions asking if anyone was convicted of a drug felony and if anyone was convicted of a drug felony more than once. (Exhibit A, pp. 24-31)
6. On [REDACTED] 2017, Spouse was convicted of "CS- DELIVER/MANUFACTURE-ME" under MCL 333.7401(2)(b)(i). (Exhibits 32-33)
7. On [REDACTED], 2017, through [REDACTED] 2017, Spouse was jailed. Exhibit A, p. 34. Spouse was subsequently transferred to prison to begin a sentence of eight (8) years. (Exhibit A, pp. 34-35)
8. On October 2, 2017, Respondent submitted to MDHHS a Redetermination. Respondent answered "No" in response to questions asking if anyone was convicted of a drug felony and if anyone was convicted of a drug felony more than once. (Exhibit A, pp. 35-42)
9. On October 8, 2017, Respondent submitted to MDHHS a State Emergency Relief (SER) application. Respondent reported that Spouse was a household member. Respondent reported that no persons in the household had drug felonies. (Exhibit A, pp. 43-67)
10. On November 1, 2017, Respondent submitted to MDHHS a State Emergency Relief (SER) application. Respondent reported that Spouse was a household member. Respondent reported that no persons in the household had drug felonies. (Exhibit A, pp. 68-92)
11. From October 2016 through November 2017, Respondent received FAP benefits based on a FAP group which four persons, including Spouse. (Exhibit A, p. 93)
12. On March 16, 2018, MDHHS calculated that Respondent received an OI of \$[REDACTED] in FAP benefits based on Spouse's improper inclusion as an eligible group member. (Exhibit A, pp. 94-122)

13. On March 27, 2018, MDHHS requested a hearing to establish an IPV disqualification of one year against Respondent. (Exhibit A, p. 1)
14. As of the date of hearing, Respondent had no known previous IPV disqualifications.

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 related to an OI of \$ [REDACTED] in FAP benefits. The basis of the IPV was Respondent's misreporting of Spouse's drug felony convictions. MDHHS made similar or identical allegations in an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 5-6) sent to Respondent as part of MDHHS' prehearing procedures.

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** [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).

For FAP benefits, people convicted of certain crimes and probation or parole violators are not eligible for assistance. An individual convicted of a felony for the use,

possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both offenses occurred after August 22, 1996. BEM 203 (October 2015), pp. 1-2.

The evidence established that Spouse had multiple drug felonies which disqualified him from receipt of FAP benefits. The evidence further established that Respondent received \$ [REDACTED] in over-issued FAP benefits from October 2016 through November 2017 based on Spouse's improper inclusion as a FAP group member. For an IPV to be established, MDHHS must establish that Respondent purposely misreported/failed to report accurate information which caused the overissuance of FAP benefits.

MDHHS presented three Redeterminations and two SER applications from Respondent which reported that Spouse had no drug felony history. MDHHS reporting documents state that the client's signature is certification, subject to perjury, that all reported information on the document was true. The language is consistent with MDHHS policy which states that clients must completely and truthfully answer all questions on forms and in interviews (see BAM 105 (October 2016), p. 8). The evidence was not indicative that Respondent did not or could not understand the clear and correct reporting requirements. Respondent's recurrent misreporting of Spouse's drug felony history directly led to an OI of FAP benefits. This consideration was supportive in finding that Respondent purposely misreported Spouse's history of drug felonies.

During the hearing, MDHHS argued that even if Spouse was unaware of Spouse's drug felony from 2007, she surely would have known of Spouse's drug conviction from [REDACTED], 2016. No evidence indicated that Respondent reported Spouse's drug felony from [REDACTED], 2016. This consideration was supportive in finding that Respondent purposely misreported Spouse's history of drug felonies.

Furthermore, the evidence indicated that Spouse was jailed in late September 2017 and remained incarcerated thereafter. Respondent reported Spouse as a household member on October 8, 2017, and November 1, 2017, despite Spouse's apparent absence from Respondent's household. Respondent's misreporting of Spouse as a household member was further evidence of a purposeful intent to misreport information to MDHHS.

It is found MDHHS clearly and convincingly established that Respondent committed an IPV. Accordingly, MDHHS may proceed with disqualifying Respondent from benefit eligibility.


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 justified.

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 based on receipt of \$ [REDACTED] in over-issued FAP benefits from October 2016 through November 2017. The MDHHS request to establish a disqualification period of one year 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

Carisa Drake
MDHHS-Calhoun-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

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

M Shumaker
Policy Recoupment
C Gardocki
MAHS