



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR



Date Mailed: November 16, 2016
MAHS Docket No.: 16-008880
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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 and 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on October 26, 2016, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], regulation agent with the Office of Inspector General. Respondent did not appear.

ISSUES

The first issue is whether MDHHS established Respondent received an overissuance of benefits.

The second issue is whether MDHHS established that Respondent committed an intentional program violation (IPV).

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Respondent was an ongoing recipient of Food Assistance Program (FAP) benefits from the State of Michigan.
2. Respondent was convicted of a drug-related felony occurring after August 22, 1996.

3. MDHHS intentionally failed to report the drug-related felony to MDHHS.
4. From November 2012 through January 2015, Respondent received [REDACTED] in FAP benefits without an authorized representative for his EBT card.
5. On [REDACTED], MDHHS requested a hearing to establish Respondent received an OI of [REDACTED] in FAP benefits from November 2012 through January 2015 due to an IPV.

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 the 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 requested a hearing, in part, to establish Respondent received an overissuance of benefits. MDHHS presented an Intentional Program Violation Repayment Agreement (Exhibit 1, pp. 6-7) alleging Respondent received [REDACTED] in over-issued FAP benefits from November 2012 through January 2015. MDHHS alleged the OI was based on Respondent's failure to report a drug-felony conviction.

[For FAP benefits,] people convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (October 2015), p. 1. A person who has been convicted of a felony for the use, possession, or distribution of controlled substances is disqualified if... terms of probation or parole are violated, and the qualifying conviction occurred after August 22, 1996. *Id.*, p. 2. If an individual is not in violation of the terms of probation or parole [for a first offense]:

- FIP benefits must be paid in the form of restricted payments
- Receipt of FAP benefits requires an authorized representative.

MDHHS presented a Michigan State Police document with Respondent's criminal history (Exhibit 1, pp. 203-207). Respondent's criminal history indicated Respondent pled guilty to "CONTROLLED SUBSTANCE- POSSESS (COCAINE, HEROIN, OR ANOTHER NARCOTIC) LESS THAN 25 GRAMS" on [REDACTED]. The charge was noted to be a felony.

An overissuance is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. BAM 700 (January 2016), p. 1. [An overissuance is an] issuance of more benefits than the eligible group is entitled to receive. Bridges Program Glossary (October 2015), p. 45.

MDHHS contended that FAP benefit issuances following Respondent's drug-related felony conviction were over-issued because Respondent did not have an authorized representative on his EBT card. The MDHHS logic supporting the contention is as follows:

- Respondent had a previous drug felony conviction.
- Had MDHHS properly processed Respondent's case, Respondent would only have had access to FAP benefits through an authorized representative.
- Respondent received FAP benefits without an authorized representative.
- Therefore, all FAP benefits issued to Respondent without an authorized representative after the drug-related felony is an overissuance.

It is highly questionable that the FAP benefits issued to Respondent were more than Respondent was "entitled to receive." Had MDHHS mandated use of an authorized representative at the time of Respondent's original application, Respondent almost certainly would have used one. It is theoretically possible that Respondent would have refused FAP benefits, though it is presumed that any person in need of FAP benefits would not be so foolish to refuse them.

In determining if an OI occurred, consideration was given to not extending the benefit of doubt to Respondent. Presented evidence (see the IPV analysis) was indicative that Respondent purposely failed to report a previous drug-related felony. A purposeful misrepresentation affecting the method which Respondent receives benefits could be construed to be an OI of benefits.

The present case involves improper actions by Respondent (the failure to report drug felonies) resulting in a "benefit" (use of an EBT card without an authorized representative). MDHHS' alleged Respondent's "benefit" was the entire amount of FAP benefits issued, however, this is inaccurate because it is likely that Respondent would have utilized an authorized representation had MDHHS required one. MDHHS essentially argued the possibility of FAP benefit ineligibility justifies a finding of an OI.

The argument construct is similar to one sometimes presented by clients who are denied benefits. The below scenario describes the circumstances typically surrounding the argument.

A client with assets applies for medical coverage. MDHHS is required to process the application within 45 days (see BAM 115), but takes 4 months to do so. After 4 months, MDHHS denies the application due to excess assets. The client happens to reapply and is approved for medical coverage after legally disposing of assets to the point of becoming asset eligible. Such clients sometimes request hearings arguing an entitlement to benefit asset eligibility from the time MDHHS should have processed the original application (45 days after the application date) through the date of the second application. The basis of the argument is that if he original benefit application was timely denied, then the client could have hypothetically taken sooner steps to correct asset

ineligibility. Such clients are denied the requested remedy because it is based on a hypothetical which did not occur.

The present case's scenario is not a perfect comparison to the above cited scenario. Most notably, Respondent's failure to report a felony drug conviction appears to be intentional, while the hypothetical MDHHS processing delay is unintentional; the essence of the arguments is comparable. An administrative remedy cannot sprout from a hypothetical scenario, even if the scenario only did not occur because of actions by one of the parties. One more consideration justifies rejecting that MDHHS established an OI of benefits.

Though it may be tempting to find an OI, in part, based on Respondent's repeated misreporting (see the below analysis), an OI has nothing to do with a client's intent. MDHHS can pursue OIs caused by agency errors (see BAM 700). Thus, a finding of an OI in the present case would equally apply to an utterly blameless client. For example, if a client reported to MDHHS a previous drug-related conviction and MDHHS happens to not mandate the client utilize an authorized representative, any benefits issued to that client would be an OI; such an outcome would be preposterous.

It is found Respondent did not receive more FAP benefits than he was entitled to receive; thus, Respondent did not receive an OI of FAP benefits. The analysis will proceed to determine if Respondent committed an IPV.

The Code of Federal Regulations defines an IPV. Intentional program violations shall consist of having intentionally: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system. 7 CFR 273.16 (c).

[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).

MDHHS defines IPV slightly differently within their glossary. 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.

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).

MDHHS presented a State Emergency Relief application (Exhibit 1, pp. 11-44) dated [REDACTED]. The document verified Respondent responded "No" to "Convicted of a Drug Felony?"

MDHHS presented a portion of a State Emergency Relief application (Exhibit 1, pp. 110-127) dated [REDACTED]. The documents did not list a section about a previous drug-related felony.

MDHHS presented a State Emergency Relief application (Exhibit 1, pp. 78-109; 128-150) dated [REDACTED]. The document verified Respondent responded "No" to "Convicted of a Drug Felony?"

MDHHS presented a State Emergency Relief application (Exhibit 1, pp. 45-77, 151-165) dated [REDACTED]. The document verified Respondent responded "No" to "Convicted of a Drug Felony?"

MDHHS presented an application for FAP benefits (Exhibit 1, pp. 166-176) dated [REDACTED]. The document verified Respondent responded "No" to "Convicted of a Drug Felony?"

MDHHS presented an application for medical benefits (Exhibit 1, pp. 177-187) dated [REDACTED]. The document verified Respondent responded "No" to "Convicted of a Drug Felony?"

MDHHS presented a State Emergency Relief application (Exhibit 1, pp. 188-202) dated [REDACTED]. The document verified Respondent responded "No" to "Convicted of a Drug Felony?"

The presented reporting documents verified Respondent repeatedly failed to disclose that he had a drug felony conviction. The evidence sufficiently established a clear and convincing intentional misreporting of information by Respondent.

As defined by the Bridges glossary, an MDHHS requires an OI. As noted in the above analysis, an OI was not established. Without an OI, an IPV cannot be found. It is found MDHHS failed to establish an IPV.

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. It is further found MDHHS failed to establish an OI of [REDACTED] in over-issued FAP benefits from November 2012 through January 2015. The MDHHS request to establish Respondent committed an IPV and received an OI of FAP benefits is **DENIED**.

CG/hw



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) 335-6088; 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

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]