



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.: 16-009438  
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 20, 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) and Family Independence Program (FIP) benefits from the State of Michigan.
2. Respondent was convicted of multiple drug-related felonies occurring between August 22, 1996, and March 2013.

3. On [REDACTED], [REDACTED], and [REDACTED], Respondent reported to MDHHS having no history of drug-related felonies.
4. From April 2013 through February 2016, Respondent received [REDACTED] in over-issued FAP benefits and [REDACTED] in over-issued FIP benefits.
5. On [REDACTED], MDHHS requested a hearing to establish Respondent received an OI of [REDACTED] in FAP benefits and [REDACTED] in FIP benefits from April 2013 through February 2016 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 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).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. MDHHS (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131. 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 and [REDACTED] in over-issued FIP benefits. MDHHS alleged both overissuances occurred from April 2013 through February 2016. MDHHS alleged the OI was based on Respondent's failure to report multiple drug-related felonies.

[For FAP and FIP benefits,] people convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (October 2015), p. 1. 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. *Id.*

MDHHS presented a Motion/Order of Nolle Prosequi (Exhibit 1, p. 53). The order was signed by a State of Michigan county court judge on November 1, 2000. The order listed 2 criminal charges against Respondent; the first charge was dismissed. The order stated Respondent plead guilty to the second count of "POSS < 25G" under 333.7403

(2)(A)(V) on [REDACTED]. The charge is a felony. An Order of Probation (Exhibit 1, pp. 54-55) related to the drug charge was also presented.

MDHHS presented a Judgment of Sentence (Exhibit 1, p. 56) dated [REDACTED]. The judgment noted a crime of "CON SUBST- DEL/MANU LESS 5 KILOS MARIJUANA" under 333.7401 (2)(D)(3); the charge is a felony. A sentence begin date of [REDACTED] was noted.

MDHHS presented Respondent's FAP benefit history (Exhibit 1, pp. 57-62). MDHHS calculated Respondent received a total of [REDACTED] in FAP benefits from April 2013 through February 2016 (see Exhibit 1, p. 63).

MDHHS presented OI budgets (Exhibit 1, pp. 64-107) from April 2013 through February 2016. The budgets calculated if Respondent was disqualified from the FAP benefit group, Respondent would have received [REDACTED] in total FAP benefits from April 2013 through February 2016.

MDHHS presented Respondent's FIP benefit history (Exhibit 1, pp. 108-114). MDHHS calculated Respondent received a total of [REDACTED] in FIP benefits from April 2013 through February 2016 (see Exhibit 1, p. 115).

MDHHS presented OI budgets (Exhibit 1, pp. 116-144) from April 2013 through February 2016. The budgets calculated if Respondent was disqualified from the FAP benefit group, Respondent would have received [REDACTED] in total FIP benefits from April 2013 through February 2016.

MDHHS established Respondent had multiple drug-related felonies as of March 2013; accordingly, Respondent was ineligible as a FAP and FIP group member as of March 2013. MDHHS further established the inclusion of Respondent as a FAP and FIP group member resulted in [REDACTED] in over-issued FAP benefits and [REDACTED] in over-issued FIP benefits. The analysis will proceed to determine if MDHHS established that the OI was caused by 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).

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 an Assistance Application (Exhibit 1, pp. 12-43). The application was electronically signed by Respondent on [REDACTED]. Respondent answered "No" in response to "Convicted of a Drug Felony?" (see Exhibit 1, p. 16).

MDHHS presented a Redetermination (Exhibit 1, pp. 44-46). The reporting document was signed by Respondent on [REDACTED]. Respondent checked "no" in response to a question asking if he had a drug-related conviction since 1996. Respondent also checked "no" in response to a question asking if he had more than one such drug-related conviction.

MDHHS presented a Redetermination (Exhibit 1, pp. 47-52). The reporting document was signed by Respondent on [REDACTED]. Respondent checked "no" in response to a question asking if he had a drug-related conviction since 1996. Respondent also checked "no" in response to a question asking if he had more than one such drug-related conviction.

The presented reporting documents each stated Respondent's signature was certification, subject to perjury, that all information on the form was true. Presented evidence was not indicative that Respondent did not understand the reporting requirements.

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

**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 [REDACTED] in over-issued FAP benefits and [REDACTED] in over-issued FIP benefits over the period from April 2013 through February 2016. The MDHHS request to establish an overissuance and IPV is **APPROVED**.

CG/hw



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**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]