



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.: 16-009852  
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 (OI) 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 multiple drug-related felonies occurring after August 22, 1996 and before January 2012.

3. On [REDACTED], Respondent intentionally misreported to MDHHS in writing that he had been convicted of a single previous drug-related felony.
4. From February 2012 through January 2013, Respondent received [REDACTED] in FAP benefits.
5. From February 2012 through January 2013, Respondent should have received \$0 in FAP benefits, after factoring Respondent's drug-related felony history.
6. On [REDACTED], MDHHS requested a hearing to establish Respondent received an OI of [REDACTED] in FAP benefits from February 2012 through January 2013 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).

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. 4-5) alleging Respondent received [REDACTED] in over-issued FAP benefits from February 2012 through January 2013. MDHHS alleged the OI was based on Respondent's failure to report multiple drug-related felonies.

[For FAP 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 Register of Actions (Exhibit 1, pp. 13-17) dated [REDACTED], from a State of Michigan county court. The document stated Respondent pled guilty to "CNTRL SUB POSSESS <25 GRM" under MCL 333.7403 (2)(A)(5). The offense date was June 15, 2006. A sentence date of [REDACTED], was stated.

MDHHS presented a Register of Actions (Exhibit 1, pp. 18-23) dated [REDACTED], from a State of Michigan county court. The document stated Respondent pled guilty to "CNTRL SUB POSSESS <25 GRM" under MCL 333.7403 (2)(A)(5). The offense date was May 7, 2006. A sentence date of [REDACTED], was stated.

MDHHS presented Respondent's FAP benefit history (Exhibit 1, pp. 24-25). Respondent received a total of [REDACTED] from February 2012 through January 2013.

Respondent's responses on a Redetermination (see Exhibit 1, p. 10) were indicative that Respondent was the only member of the FAP benefit group. As the only group member, a disqualification of Respondent would justify a total disqualification of FAP benefit eligibility.

It is found Respondent received an OI of [REDACTED] in FAP benefits from February 2012 through January 2013 due to a history of multiple drug-related felonies. 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 a Redetermination (Exhibit 1, pp. 9-12) signed by Respondent on [REDACTED]. In response to a question asking if Respondent was convicted of a drug-related felony since August 22, 1996, Respondent answered affirmatively. In

response to a question asking if Respondent was convicted of more than one drug-related felony, Respondent answered negatively.

MDHHS contended Respondent's failure to report more than 1 drug-related felony conviction was clear and convincing evidence of an IPV. For MDHHS to establish fraud, it must be clear and convincing that Respondent answered the question untruthfully.

Generally, a client's statement which contradicts known facts is clear and convincing evidence of an IPV. Evidence was not presented to rebut the generality.

The Redetermination 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 receipt of [REDACTED] in over-issued FAP benefits for the period from February 2012 through January 2013. 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]