



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: November 16, 2016
MAHS Docket No.: 16-012696
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) benefits from the State of Michigan.
2. Respondent was convicted of multiple drug-related felonies occurring between August 22, 1996, and January 2015.

3. On [REDACTED], Respondent reported to MDHHS that he has a drug-related felony history.
4. The application completed by Respondent did not inquire how many drug-related felonies Respondent had.
5. From January 2015 through December 2015 Respondent received [REDACTED] in FAP benefits.
6. On [REDACTED], MDHHS requested a hearing to establish Respondent received an OI of [REDACTED] in FAP benefits from January 2015 through December 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 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. 5-6) alleging Respondent received [REDACTED] in over-issued FAP benefits from January 2015 through December 2015. 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. 39-42) from a State of Michigan county court. The document indicated a conviction of "CNTRL SUB POSSESS <25 GRM" under MCL 333.7403 (2)(A)(5); the offense is punishable by more than 1 year. The offense date was [REDACTED]. A sentence date of [REDACTED] was stated. The conviction is not countable as a drug-related felony for purposes of FAP eligibility because the offense date occurred before August 22, 1996.

MDHHS presented a Register of Actions (Exhibit 1, pp. 50-53) from a State of Michigan county court. The document indicated a conviction of "CNTR SUB PSS MARIHUANA"

under MCL 333.7403 (2)(D); the offense is not punishable by more than 1 year and should not be counted towards FAP disqualification.

MDHHS presented a Register of Actions (Exhibit 1, pp. 43-45) from a State of Michigan county court. The document indicated a conviction of "CONT SUB-DEL/MFG MARIJUAN" under MCL 333.7401 (2)(D)(3); the offense is punishable by more than 1 year. The offense date was [REDACTED]. A sentence date of [REDACTED], was stated.

MDHHS presented a Register of Actions (Exhibit 1, pp. 46-49) from a State of Michigan county court. The document indicated a conviction of "CNTRL SUB POSSESS <25 GRM" under MCL 333.7403 (2)(A)(5); the offense is punishable by more than 1 year. The offense date was [REDACTED]. A sentence date of [REDACTED] was stated.

MDHHS presented Respondent's benefit history (Exhibit 1, pp. 54-55). Respondent received a total of [REDACTED] in FAP benefits from January 2015 through December 2015.

Respondent's responses on a Redetermination (see Exhibit 1, pp. 12-13) were indicative that Respondent was the only member of the FAP benefit group. As the only group member, a disqualification of Respondent would have justified a total disqualification of FAP benefit eligibility.

It is found Respondent had multiple drug-related felonies occurring after August 22, 1996. It is further found Respondent received an OI of [REDACTED] in FAP benefits from January 2015 through December 2015. 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 Respondent's Assistance Application (Exhibit 1, pp. 10-37). The application was signed by Respondent on [REDACTED]. Respondent answered affirmatively to a question asking "Convicted of a Drug Felony?" (see Exhibit 1, p. 14).

MDHHS presented a Case Comments- Summary (Exhibit 1, p. 38). MDHHS credibly stated the notes were completed by Respondent's specialist. On [REDACTED], it was noted that an interview was conducted and that "per client, only has 1 drug charg [sic]."

MDHHS contended an IPV is justified based on Respondent's verbal reporting to his specialist that he was convicted only of 1 drug-related felony. The contention requires a belief that the specialist's notes accurately reflected Respondent's statements. For purposes of this decision, it will be found that Respondent verbally reported that he had only a single previous drug-related felony.

It is curious that MDHHS can disqualify a client based on multiple drug-related felonies, yet the benefit application fails to ask the client to report the number of drug-related felonies in his/her past. It might not be feasible for a benefit application to address every single potential policy nuance. It appears wholly feasible to simply ask a client if he/she has been convicted of multiple drug-related felonies. If a particular question is not included within the application, it signals to a client that the question is not relevant to benefit eligibility. Thus, any misreporting by Respondent which does not address information from the benefit application should not be perceived to be one expected to be punishable if answered incorrectly. This consideration justified rejecting that Respondent did not commit an IPV by verbally reporting misinformation which was not asked on the benefit application.

It is found MDHHS failed to clearly and convincingly establish that Respondent committed an IPV. Accordingly, it is found MDHHS may not 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 received [REDACTED] in over-issued FAP benefits from January 2015 through December 2015. The MDHHS request to establish an overissuance is **APPROVED**.

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 related to an OI of FAP benefits from January 2015 through December 2015. The MDHHS request to establish Respondent committed an IPV 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]