RICK SNYDER GOVERNOR

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

SHELLY EDGERTON

| Date Mailed: December 19, 2016 |
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| MAHS Docket No.: |
| Agency No.: |
| Petitioner: |
| Respondent: |
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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 from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by 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.

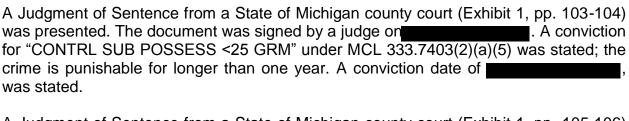
The second issue is whether MDHHS established that Respondent committed an intentional program violation (IPV).

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

| | ple dates, Respondent intentionally misreported to Nated felonies. | MDHHS his history of |
|--|---|--|
| 4. From benefits. | , Respondent rece | eived in FAP |
| 5. From in FAP b | , Respondent wou benefits if Respondent's drug-related felony history w | |
| | MDHHS requested a hearing to estain the control of | stablish Respondent |
| 7. Respond | dent had no previous history of IPVs. | |
| | CONCLUSIONS OF LAW | |
| established by and is implem (formerly known MCL 400.10, t 400.30013011 (BAM), Bridges MDHHS reque overissuance Repayment Agreeived | in over-issued FAP benefits from | USC 2011 to 2036a CFR 273. MDHHS ers FAP pursuant to lich Admin Code, R dministrative Manual nual (RFT). Indent received an Program Violation alleging Respondent |
| MDHHS allege related felonies | ed the OI was based on Respondent's failure to r | report multiple drug- |
| attempt to reco [bold lettering r provider in exc | group receives more benefits than it is entitled to recup the overissuance. BAM 700 (January 2016), p. removed] is the amount of benefits issued to the cess of what it was eligible to receive. <i>Id.</i> Recoup IDHHS action to identify and recover a benefit overishing. | 1. An overissuance client group or CDC oment [bold lettering |
| are not eligible felony for the times in separa | fits,] people convicted of certain crimes and probatic for assistance. BEM 203 (July 2013), p. 1. An indi- use, possession, or distribution of controlled subs te periods will be permanently disqualified if both off | vidual convicted of a stances two or more |



A Judgment of Sentence from a State of Michigan county court (Exhibit 1, pp. 105-106) was presented. The document was signed by a judge on A conviction for "CONTRL SUB POSSESS <25 GRM" under MCL 333.7403(2)(a)(5) was stated; the crime is punishable for longer than one year. A conviction date of stated.

MDHHS presented Respondent's FAP benefit history (Exhibit 1, pp. 107-117). The history listed an issuances totaling from though Respondent did not receive FAP benefits for all months during the alleged OI period).

Respondent's responses on presented applications and redetermination forms were indicative that Respondent was the only member of the FAP benefit group throughout the alleged OI period. As the only group member, a disqualification of Respondent would justify a total disqualification of FAP benefit eligibility.

Presented evidence established Respondent was convicted of multiple drug-related felonies which should have disqualified Respondent from FAP eligibility beginning. It is found that Respondent received an OI of in FAP benefits from The analysis will proceed to determine if 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).

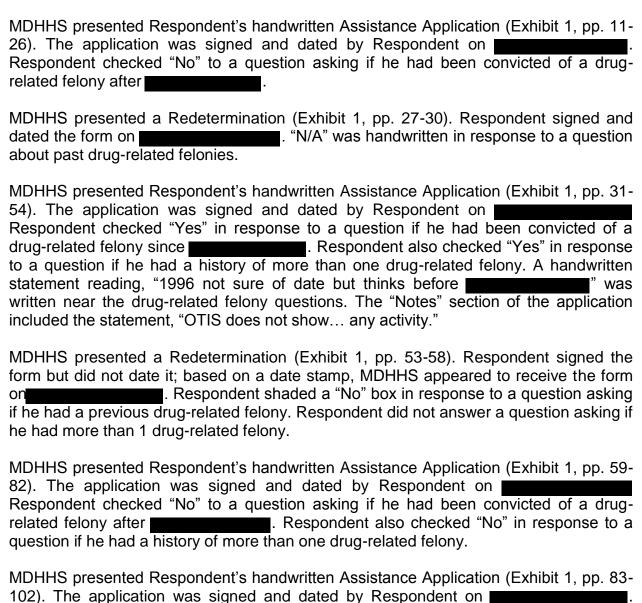
[An IPV is a] benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his authorized representative. Bridges Program Glossary (October 2015), p. 36. A suspected IPV means an OI exists for which all three of the following conditions 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. <u>Black's Law Dictionary</u> 888 (6th ed. 1990).



Respondent checked "No" to a question asking if he had been convicted of a drug-

related felony after _____. Respondent also checked "No" in response to a question if he had a history of more than one drug-related felony.

The presented benefit applications 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.

Consideration was given to finding that Respondent forgot he was convicted of multiple drug-related felonies since The consideration is somewhat supported by Respondent's honest reporting in that he was convicted of multiple drug-related felonies.

Even if it was found that Respondent honestly reported to MDHHS a history of drugrelated convictions in MDHHS still has a basis for an IPV based on Respondent's dishonest reporting in Massell. It is also notable that Respondent's "honest" reporting in was followed by misreporting of his drug-related past.

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

It is found MDHHS clearly and convincingly established that Respondent committed an IPV. Accordingly, it is found 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 1 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 in over-issued FAP benefits for the period from . The MDHHS request to establish an overissuance and IPV (Respondent's 1st) is **APPROVED.**

Christin Dordock

CG/hw

Christian Gardocki
Administrative Law Judge
for Nick Lyon, Director

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

| Petitioner | |
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| DHHS | |
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| Respondent | |
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