



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: March 3, 2017

MAHS Docket No.: [REDACTED]

Agency No.: [REDACTED]

Petitioner: [REDACTED]

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 [REDACTED] 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 [REDACTED].

3. Respondent intentionally misreported to MDHHS a history of drug-related felonies.
4. From [REDACTED], Respondent received an OI of [REDACTED] in FAP benefits.
5. On [REDACTED] MDHHS requested a hearing to establish Respondent received an OI of [REDACTED] in FAP benefits from [REDACTED] due to an IPV.
6. As of the hearing date, Respondent had no history of IPV's.

### 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 unsigned Intentional Program Violation Repayment Agreement (Exhibit 1, pp. 5-6) dated [REDACTED]. The document and MDHHS testimony alleged Respondent received [REDACTED] in over-issued FAP benefits from [REDACTED]. MDHHS alleged the OI was based on Respondent's multiple drug-related felonies.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (January 2016), p. 1. An overissuance [bold lettering removed] is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. *Id.* Recoupment [bold lettering removed] is a MDHHS action to identify and recover a benefit overissuance. *Id.*, p. 2.

[For FAP benefits,] people convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (July 2013), 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.*, p. 2.

MDHHS presented a copy of an email (Exhibit 1, pp. 29-30) dated [REDACTED]. MDHHS testimony indicated the email was sent from a staff person with the Michigan Department of Corrections; the testimony was consistent with an "MDOC" abbreviation

by the sender's name. The email stated Respondent was convicted of "Controlled Substance- 2<sup>nd</sup> or Subsequent Offense" on [REDACTED]. The email stated Respondent was convicted of "Possess Less Than 25 Grams Cocaine / HOA 2<sup>nd</sup>" on [REDACTED].

MDHHS presented a Judgment of Conviction and Sentence and commitment to Jail (Exhibit 1, p. 31). The document was signed by a judge on [REDACTED]. The judgment stated Respondent was convicted of "Attempted Possession with the Intent to Deliver the Controlled Substance, Marijuana" on [REDACTED]. The crime is a felony under MCL 333.7402(2)(D)(iii). An Order of Probation (Exhibit 1, pp. 32-34) related to the conviction was also presented.

MDHHS presented a Judgment of Sentence (Exhibit 1, p. 35) from a Michigan county court. The document stated Respondent was convicted of "Cntrl Sub Possess < 25 GRM" on [REDACTED]. The crime is a felony under MCL 333.7403(2)(A)(5). The judgment was accompanied by an Order of Probation (Exhibit 1, pp. 36-37) and Action in Court (Exhibit 1, pp. 38)

MDHHS presented a Judgment of Sentence (Exhibit 1, p. 39-40) from a Michigan county court. The document stated Respondent was convicted of "CNT SUB-2<sup>nd</sup> OFF-DBL PELT" on [REDACTED]. The crime is a felony under MCL 333.7413.

MDHHS presented Respondent's FAP benefit history (Exhibit 1, pp. 41-43) from [REDACTED]. Issuances to Respondent totaling [REDACTED] ([REDACTED] for each benefit month) during the alleged OI period were listed.

MDHHS alleged that a disqualification of Respondent from any FAP benefit month from the alleged OI period justifies an OI for the entire FAP benefit issuance to Respondent. The MDHHS allegation was consistent with presented reporting documents listing Respondent as the only FAP benefit group member.

Presented evidence established Respondent was convicted of multiple drug-related felonies which should have disqualified Respondent from FAP eligibility during the alleged OI period. It is found that Respondent received an OI of [REDACTED] in FAP benefits. 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. Black's Law Dictionary 888 (6th ed. 1990).

MDHHS presented a Redetermination (Exhibit 1, pp. 12-16). Respondent's signature was dated [REDACTED]. Respondent did not answer if he was convicted of a previous drug-related felony.

MDHHS presented a Notice of Case Action (Exhibit 1, pp. 23-26) dated [REDACTED]. The notice informed Respondent of an approval of FAP eligibility, effective [REDACTED]. The notice included boilerplate language informing Respondent to report changes within 10 days. A Change Report (Exhibit 1, pp. 27-28) of the same date also informed Respondent to report changes within 10 days.

MDHHS presented a Redetermination (Exhibit 1, pp. 17-22). Respondent's signature was dated [REDACTED]. Respondent checked, "No", in response to the question, "Has anyone been convicted of a drug-related felony occurring after [REDACTED]?" Respondent checked, "No", in response to the follow-up question, "Convicted more than once?"

MDHHS has policy to address misreporting. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015), p. 8.

MDHHS clearly and convincingly established Respondent misreported having multiple drug-related felony convictions. 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 a 1 year IPV disqualification against Respondent 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]  
[REDACTED]

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED]