



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: April 14, 2017
MAHS Docket No.: 16-015776
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 March 16, 2017, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED] lead regulation agent with the Office of Inspector General. Respondent did not appear.

ISSUES

The first issue is whether MDHHS established Respondent received an over-issuance (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. On [REDACTED], Respondent was convicted of a second drug-related felony since August 22, 1996.

3. Respondent did not intentionally misreport to MDHHS a history of drug-related felonies.
4. Respondent received \$ [REDACTED] in FAP benefits for January 2015.
5. From February 2015 through November 2015, Respondent received an OI of \$ [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 November 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 dated [REDACTED], (Exhibit 1, pp. 4-5) alleging Respondent received \$ [REDACTED] in over-issued FAP benefits from January 2015 through November 2015. MDHHS alleged the OIs were based on Respondent's history of 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 Register of Actions (Exhibit 1, pp. 10-11) from a Michigan county court. The document stated Respondent was convicted of "Controlled Substance-

Delivery/Manufacture (schedule 4)" on [REDACTED]. The crime is a felony under MCL 333.7401 (2)(c).

MDHHS presented a Register of Actions (Exhibit 1, pp. 12-13) from a Michigan county court. The document stated Respondent was convicted of "Possession (narcotic or Cocaine) Less Than 25 Grams" on [REDACTED]. The crime is a felony under MCL 333.7403 (2)(a)(5).

MDHHS presented a portion of Respondent's FAP benefit history (Exhibit 1, pp. 20-21). FAP benefits issuances to Respondent from January 2015 through November 2015 totaled \$ [REDACTED]; each benefit issuance was for \$ [REDACTED].

MDHHS testimony indicated Respondent was the only FAP-benefit-group member throughout the alleged OI period. The testimony was consistent with presented reporting documents. As the only group member, a disqualification of Respondent would justify a total disqualification of FAP benefit eligibility.

It was not disputed that Respondent was an ongoing FAP benefit recipient from the date of second drug-related felony through the first month of the alleged OI period. As an ongoing FAP benefit recipient, a consideration of when the alleged OI began is necessary.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2016), p. 11. Changes [in income] must be reported within 10 days of receiving the first payment reflecting the change. *Id.*

[MDHHS is to] act on a change reported by means other than a tape match within 10 days of becoming aware of the change. BAM 220 (October 2015), p. 7. If the reported change will decrease the benefits or make the household ineligible, action must be taken and a notice issued to the client within 10 days of the reported change. *Id.*, p. 8.

There are two types of written notice: adequate and timely. BAM 220 (1/2014), p. 2. An adequate notice is a written notice sent to the client at the same time an action takes effect (not pended). *Id.* A timely notice is mailed at least 11 days before the intended negative action takes effect. The action is pended to provide the client a chance to react to the proposed action. *Id.*, p. 4.

For income increases that result in a benefit decrease, action must be taken and notice issued to the client within the Standard of Promptness (FAP -10 calendar days, FIP/SDA -15 workdays). BEM 505 (July 2015), p. 11. The effective month is the first full month that begins after the negative action effective date. *Id.*

The "10-10-12 Rule" is the unofficial name for the policies generally requiring at least 32 days between the date of a circumstance change and the first month of an alleged OI period. The relevant circumstance change date in the present was December 5, 2014 (the date of Respondent's second drug-related felony). Applying the 10-10-12 Rule

results in Respondent's FAP benefit eligibility being affected no earlier than February 2015. It is found MDHHS failed to establish an OI of \$ [REDACTED] for January 2015.

Presented evidence established Respondent was convicted of multiple drug-related felonies which would have disqualified Respondent from FAP eligibility from February 2015 through the end of the alleged OI period. It is found that Respondent received an OI of \$ [REDACTED] in FAP benefits from February 2015 through November 2015. 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 Respondent's Redetermination for FAP benefits (Exhibit 1, pp. 14-19). Respondent's signature was dated [REDACTED]. Respondent checked "No" to a question asking, "Has anyone ever been convicted of a drug-related felony occurring after August 22, 1996?" Respondent did not answer a follow-up question asking if anyone was convicted more than once (see Exhibit 1, p. 18). MDHHS received the Redetermination on [REDACTED].

The presented reporting document 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.

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.

Respondent was convicted of a second drug-related felony after he signed the Redetermination. This consideration supports rejecting that Respondent's untruthfulness caused an OI of FAP benefits.

Even if Respondent's second drug-related felony conviction occurred after the date of Respondent's signature on the Redetermination, Respondent still misreported his criminal history. Respondent surely was aware that he had an earlier drug-related felony. This consideration supports finding that Respondent committed an IPV. It must also be acknowledged that a single drug-related felony would not have impacted Respondent's FAP eligibility (other than requiring an authorized representative).

MDHHS happened to receive Respondent's Redetermination shortly after Respondent's second drug-related felony conviction. Respondent could be argued to have had a duty to update the document before he submitted the form to MDHHS. This consideration supports finding that Respondent committed an IPV.

The date of MDHHS' receipt of Respondent's Redetermination is so near to the second conviction date that it is theoretically possible that Respondent mailed the form to MDHHS before he was convicted of a drug-related felony. This consideration is suggestive that Respondent did not commit an IPV, though it is acknowledged that Respondent presented no evidence of such a scenario.

Even if Respondent did not intend to misreport in writing his criminal history, he still had a duty to verbally report a drug-related felony (see BAM 105). If Respondent's failure was framed as a failure to report, it is plausible that Respondent simply forgot, or was sincerely unaware of a need to report the drug-related felony. Though MDHHS applications are known to advise clients to report changes within 10 days, it does not ensure that a client would not forget.

MDHHS did not present written statements from Respondent which convincingly contradicted known facts. Generally, MDHHS will have difficulty in establishing a clear and convincing purposeful failure to report information when there is not written documentation from a respondent which contradicts known facts. Presented evidence was not persuasive in overcoming the general rule.

It is found MDHHS failed to clearly and convincingly establish that Respondent committed an IPV. Accordingly, it is found MDHHS may not proceed with imposing an IPV disqualification against Respondent.

DECISION AND ORDER

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 due to unreported drug-related felonies. The MDHHS request to establish that Respondent committed an IPV is **DENIED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish that Respondent received an OI of \$ [REDACTED] in FAP benefits for January 2015. The MDHHS request to establish an OI is **PARTIALLY DENIED**.

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 February 2015 through November 2015. The MDHHS request to establish an overissuance is **PARTIALLY APPROVED**.

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]

[REDACTED]

[REDACTED]

Respondent

[REDACTED]