



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: June 27, 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 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. From [REDACTED] Respondent was incarcerated.

3. From [REDACTED], Respondent received [REDACTED] in FAP benefits.
4. MDHHS did not establish that Respondent purposely failed to report incarceration.
5. On [REDACTED], MDHHS requested a hearing to establish Respondent committed an IPV and received an OI of [REDACTED] in FAP benefits for the months from [REDACTED].

### 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 alleged Respondent received an over-issuance of [REDACTED] in FAP benefits from [REDACTED].

The repayment agreement, along with MDHHS testimony, alleged the OI was based on Respondent's residency in a correctional facility. A person in a federal, state or local correctional facility for more than [sic] 30 days is not eligible to receive FIP, SDA or FAP benefits. BAM 804 (July 2014), p. 1.

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.

MDHHS presented an email string (Exhibit 1, p. 40). An email dated [REDACTED], from the testifying regulation agent requested Respondent's dates of incarceration. A response dated [REDACTED], indicated Respondent was booked on [REDACTED].

Presented evidence sufficiently verified Respondent was incarcerated from [REDACTED]. Thus, Respondent was not entitled to receive FAP benefits during the alleged OI period.

MDHHS presented Respondent's issuance history for FAP benefits (Exhibit 1, p. 50). Monthly issuances of [REDACTED] were listed from [REDACTED].

It is found that MDHHS established that Respondent received an OI of [REDACTED] in FAP benefits during the OI period. The analysis will consider whether 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).

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (October 2016), p. 11. Changes [in income] must be reported within 10 days of receiving the first payment reflecting the change. *Id.* Other changes must be reported within 10 days after the client is aware of them. *Id.*, p. 12.

In the OI analysis, it was found that Respondent received an OI of FAP benefits due to Respondent's incarceration for longer than 30 days. MDHHS alleged the OI was caused by Respondent's purposeful failure to report incarceration to MDHHS.

MDHHS presented Respondent's application for FAP benefits (Exhibit 1, pp. 12-39). The application was electronically-signed by Respondent on [REDACTED]. MDHHS presented the document to verify that Respondent was informed of a responsibility to report changes within 10 days. Boilerplate application language stated that the applicant's signature was certification that the applicant read and understood a section titled "Rights & Responsibilities"; reporting income within 10 days was a stated responsibility. MDHHS did not allege that the application misreported relevant information.

Respondent's alleged failure to report incarceration to MDHHS could reasonably be explained by Respondent forgetting. Though MDHHS applications are known to advise clients to report changes within 10 days, it does not ensure that a client would not accidentally forget. It is further possible that Respondent reported incarceration to MDHHS, but MDHHS did not process the reporting. This consideration supports rejecting that Respondent committed an IPV. MDHHS testimony implied that Respondent's expenditures were consistent with shady actions.

MDHHS presented Respondent's EBT expenditure history (Exhibit 1, pp. 43-47). Respondent's EBT balance as of [REDACTED] was [REDACTED]. As of [REDACTED] [REDACTED] Respondent's EBT balance was [REDACTED]

MDHHS verified Respondent spent over [REDACTED] in FAP benefits within approximately four weeks. MDHHS testimony further supported the suspicious nature of the expenditures by noting that Respondent claimed to be homeless around this time, thereby raising questions as to where Respondent could store the large amounts of purchased food.

A highly reasonable explanation for Respondent's large FAP expenditures within a short period is FAP-benefit trafficking. Trafficking of FAP benefits is an IPV. MDHHS contended that a client that traffics FAP benefits is more likely to purposely not report incarceration.

Respondent's EBT usage was alarming and suspicious for trafficking (though non-trafficking explanations abound for the EBT usage). Even if it was found that Respondent trafficked FAP benefits, FAP trafficking does not make Respondent's reporting of incarceration more likely.

MDHHS did not present verification of a written misreporting by Respondent. Generally, MDHHS will have difficulty in establishing a clear and convincing purposeful failure to report information when there is not verification of misreporting. 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 established that Respondent received [REDACTED] in over-issued FAP benefits from [REDACTED]. 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 incarceration for the months from [REDACTED]. The MDHHS request to establish that Respondent committed an IPV is **DENIED**.

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]

**Petitioner**

[REDACTED]

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED]