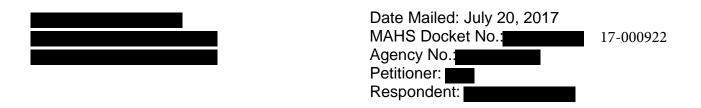
RICK SNYDER GOVERNOR

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

SHELLY EDGERTON



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 the properties of MDHHS) was represented by the michigan Department of Health and Human Services (MDHHS) was represented by the michigan agent with the Office of Inspector General. Respondent did not appear.

#### **ISSUES**

The first issue is whether MDHHS established Respondent received an overissuance (OI) of benefits.

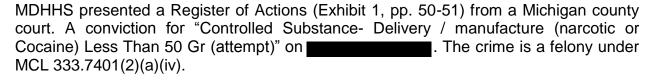
The second issue is whether MDHHS established that Respondent committed an intentional program violation (IPV).

### **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. Respondent was convicted of multiple drug-related felonies occurring between , and \_\_\_\_\_\_.

	spondent intentionally misreported to MDHHS a history of drug-related nies.
4. Froi FAF	m Respondent received an OI of in the policy
	MDHHS requested a hearing to establish Respondent eived an OI of in FAP benefits from to an IPV.
6. Res	spondent had no previous history of IPVs.
	CONCLUSIONS OF LAW
established and is im (formerly k MCL 400. 400.3001-	Assistance Program (FAP) [formerly known as the Food Stamp program] is d by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a plemented by the federal regulations contained in 7 CFR 273. MDHHS known as the Department of Human Services) administers FAP pursuant to 10, the Social Welfare Act, MCL 400.1119b, and Mich Admin Code, R. 3011. MDHHS policies are contained in the Bridges Administrative Manual dges Eligibility Manual (BEM), and Reference Tables Manual (RFT).
overissuar Repaymer alleged Ro through	requested a hearing, in part, to establish Respondent received an acce of benefits. MDHHS presented an unsigned Intentional Program Violation of Agreement dated (Exhibit 1, pp. 5-6). The document espondent received in over-issued FAP benefits from
attempt to [bold letter provider in	ient group receives more benefits than it is entitled to receive, MDHHS must recoup the overissuance. BAM 700 (January 2016), p. 1. An overissuance ring removed] is the amount of benefits issued to the client group or CDC excess of what it was eligible to receive. <i>Id.</i> Recoupment [bold lettering is a MDHHS action to identify and recover a benefit overissuance. <i>Id.</i> , p. 2.
are not eli individual	penefits,] people convicted of certain crimes and probation or parole violators gible for assistance. BEM 203 (October 2011) p. 2. [For FAP benefits,] an convicted of a felony for the use, possession, or distribution of controlled s two or more times will be permanently disqualified if both offenses occurred. <i>Id.</i>
court. A cocaine) I	resented a Register of Actions (Exhibit 1, pp. 48-49) from a Michigan county conviction for "Controlled Substance- Delivery / manufacture (narcotic or Less Than 50 Gr (attempt)" on The crime is a felony 333.7401(2)(a)(iv).



MDHHS presented Respondent's FAP benefit history (Exhibit 1, pp. 52-57) from \_\_\_\_\_\_. Issuances totaling \_\_\_\_\_ were listed.

MDHHS alleged Respondent was the only member of the FAP-benefit group throughout the alleged OI period. The allegation was consistent with presented reporting documents and FAP-benefit issuance amounts. 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 would have disqualified Respondent from FAP eligibility during the alleged OI period. MDHHS established Respondent received in FAP benefits during the alleged OI period. It is found that MDHHS established that Respondent received an OI of 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. <u>Black's Law Dictionary</u> 888 (6th ed. 1990).

MDHHS presented Respondent's application for FAP benefits (Exhibit 1, pp. 11-41). Respondent's electronic signature was dated Respondent was the only listed household member. Respondent answered "No" to a question asking if Respondent was convicted of a drug felony (see Exhibit 1, p. 15).

MDHHS presented Respondent's redetermination for FAP benefits (Exhibit 1, pp. 42-47). Respondent's handwritten signature was dated . Respondent checked "No" in response to the question, "Has anyone been convicted of a drug-related felony occurring after . (see Exhibit 1, p. 46). Respondent checked "No" in response to a follow-up question asking if Respondent was convicted more than once.

The presented reporting documents 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.

MDHHS clearly and convincingly established Respondent misreported a history of multiple drug-related felony convictions. Generally, an OI caused by 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 12-month disqualification period against Respondent is **APPROVED.** 

CG/hw

Christian Gardocki
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Willia Dordock

**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	
Petitioner	
Respondent	