



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]
[REDACTED]

Date Mailed: August 4, 2017
MAHS Docket No.: 16-007867-RECON
Agency No.: [REDACTED]
Petitioner: OIG
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 appeared and was unrepresented.

A hearing was originally conducted on [REDACTED], concerning the same matter. A hearing decision followed on [REDACTED]. On an unspecified date, Respondent requested a rehearing for the reason that he did not receive notice of the original hearing. On [REDACTED], the Michigan Administrative Hearing System approved Respondent's request for rehearing and ordered that a hearing be rescheduled, with proper notice to Respondent, and that a de novo hearing be conducted.

ISSUES

1. The first issue is whether MDHHS established Respondent received an overissuance of benefits.
2. 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 a parole absconder.
3. From [REDACTED], Respondent was a parole absconder.
4. On [REDACTED], Respondent intentionally misreported to MDHHS he was not a parole absconder.
5. From [REDACTED], Respondent received \$ [REDACTED] in FAP benefits.
6. From [REDACTED], Respondent received \$ [REDACTED] in FAP benefits.
7. Had Respondent reported his parole absconder status, he would have received \$0 FAP benefits from the periods [REDACTED] and [REDACTED].
8. On [REDACTED], MDHHS requested a hearing to establish Respondent received an OI totaling \$ [REDACTED] in FAP benefits from [REDACTED] and [REDACTED].
9. Respondent had no previous 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 dated [REDACTED], (Exhibit 1, pp. 4-5) alleging Respondent received a total of \$ [REDACTED] in over-issued FAP benefits over two different time periods. MDHHS testimony alleged Respondent received \$ [REDACTED] from [REDACTED] [REDACTED]. MDHHS also alleged Respondent received \$ [REDACTED] from [REDACTED].

██████████. MDHHS alleged the OI was based on Respondent's status as a parole absconder.

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 FIP and FAP benefits,] a person who is violating a condition of probation or parole imposed under a federal or state law is disqualified. BEM 203 (October 2015), p. 3. The person is disqualified as long as the violation occurs. *Id.*

MDHHS presented Respondent's Offender Tracking Information System (OTIS) information (Exhibit 1, pp. 29-31). OTIS is understood to be a public website ran by the Michigan Department of Corrections. A history of various crimes was listed under a specific MDOC number. The document included a photograph of Respondent dated ██████████.

MDHHS presented a Michigan Department of Corrections Offender Movement Report (Exhibit 1, pp. 32-34). The document listed a case history for the MDOC number listed on OTIS. On ██████████, Respondent was stated to be an "Absconder from Parole"; the next chronological entry was dated ██████████, which stated, "Held Under Custody". On ██████████, Respondent was again stated to be an "Absconder from Parole"; the next chronological entry was dated ██████████, which stated, "Held Under Custody".

MDHHS presented Respondent's FAP benefit history (Exhibit 1, pp. 25-28). The history listed issuances from ██████████. Respondent received \$██████ for each benefit month except ██████████ (he received \$██████

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 appeared to establish that Respondent was a parole absconder from at least ██████████ until his arrest in ██████████. Presented evidence also appeared to establish that Respondent was a parole absconder from at least ██████████ when an arrest again ended his absconder status.

Respondent contended that as of ██████████, he was not in absconder status. Respondent further contended that the OTIS photograph from ██████████ proved his contention.

An MDOC photograph of Respondent from ██████████ only tends to verify that Respondent was arrested in ██████████. An arrest from ██████████ is consistent with a

mugshot from [REDACTED]; they are both consistent with Respondent being an absconder until his arrest in [REDACTED].

Respondent's testimony referenced a class action suit against the State of Michigan- *Barry v. Lyons* (also known as *Barry v Corrigan*, No. 13-cv-13185, 2015 WL 136238 (ED Mich Jan 9, 2015). The decision essentially found that MDHHS violated the due process of clients for the methods used to terminate the eligibility of fugitive felons. MDHHS was ordered to reinstate benefits to clients and to conduct hearings which did not violate due process before terminating a client's benefit eligibility. Whether Respondent was impacted by *Barry v. Lyons* is not relevant to the OI or IPV consideration.

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 Respondent's handwritten Assistance Application (Exhibit 1, pp. 9-24). The application was signed and dated by Respondent on [REDACTED]. The application stated that Respondent's signature was certification that Respondent reviewed

and agreed with the application's Information Booklet; the Information Booklet informs clients of various MDHHS policies, including the requirement of reporting changes within 10 days. MDHHS did not allege that the application misrepresented any information.

MDHHS presented Respondent's handwritten Assistance Application (Exhibit 1, pp. 35-55). The application was signed and dated by Respondent on [REDACTED]. A box was checked "No" in response to a question asking, "Is anyone in violation of probation or parole?"

Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015), p. 8. A failure to truthfully answer questions is highly indicative of a fraudulent intent.

As of [REDACTED], Respondent was a parole absconder, and had been for several months. Respondent's misreporting of his absconder status is compelling evidence of an intent to commit fraud.

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. Presented evidence also established Respondent was aware of his duty to accurately report information. No evidence was presented to suggest Respondent was unaware of his reporting requirements.

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 present evidence of Respondent's IPV history. Due to the absence of evidence presented by MDHHS, whether Respondent previously committed an IPV will be considered in the most favorable light for Respondent. The most favorable light assumes Respondent had no previous IPV's. Thus, a 1-year disqualification period is justified. One final consideration remains.

MDHHS can administratively recoup benefit overissuances by taking a percentage of ongoing benefit issuances. The percentage varies depending on whether the OI was caused by an IPV or not (see BAM 725). Thus, it is relevant not only if an OI and IPV occurred; but it is also relevant how much of the OI was caused by the IPV.

Respondent's written misreporting technically only caused an OI of benefits from [REDACTED]. Consideration was given to restricting the IPV period to [REDACTED] because MDHHS did not establish that Respondent's misreporting caused an OI of benefits outside of [REDACTED]. Ultimately, this consideration was rejected.

The question concerning probation absconder on Respondent's initial application for benefits adequately notified Respondent that parole compliance is a relevant benefit eligibility factor. Thus, Respondent was likely aware of his responsibility to report. Respondent's subsequent written misreporting renders it very likely that Respondent intentionally failed to report to MDHHS his status as an absconder for the entire overissuance period. Given presented evidence, it is clear and convincing that Respondent purposely failed to report absconder status to MDHHS for all months within the OI period.

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 \$ [REDACTED] in over-issued FAP benefits for the periods from [REDACTED] and [REDACTED]. The MDHHS request to establish an overissuance and a 12-month disqualification period against Respondent is **APPROVED**.

CG/jaf



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

