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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: August 2, 2017  
MAHS Docket No.: [REDACTED] 17-000842  
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 (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 Food Assistance Program (FAP) benefit recipient.
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. Respondent had no previous history of 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] [REDACTED] [REDACTED] (Exhibit 1, pp. 5-6) alleging Respondent received [REDACTED] in over-issued FAP benefits from [REDACTED] [REDACTED]. MDHHS alleged the OI was based on Respondent's history of drug 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 [REDACTED]. *Id.*, p. 2.

MDHHS presented a Case Register of Actions (Exhibit 1, pp. 122-129) from a Michigan county court. Respondent was convicted of "Controlled Substances – Possession (narcotic or Cocaine) Less Than 25 Grams" on [REDACTED]. The crime is a felony under MCL 333.7403(2)(a)(v).

MDHHS presented a Case Register of Actions (Exhibit 1, pp. 130-135) from a Michigan county court. Respondent was convicted of "Controlled Substances – Possession (narcotic or Cocaine) Less Than 25 Grams (Attempt)" on [REDACTED]. The crime is a felony under MCL 333.7403(2)(a)(v).

The stated punishment for a conviction under MCL 333.7403(2)(a)(v) is "...imprisonment for not more than 4 years or a fine of not more than [REDACTED] or both." Technically, Respondent was convicted of the attempted crime of MCL 333.7401(2)(d)(iii). Consideration was given to finding that the attempted controlled substance crime was not a felony.

MDHHS policy is not known to define "felony". A traditional definition of felony is a crime punishable by more than one year. The Michigan Penal Code defines felonies differently.

A crime is: 1. A felony; or 2. A misdemeanor. MCL 750.6. The term "felony" when used in this act, shall be construed to mean an offense for which the offender, on conviction may be punished by death, or by imprisonment in state prison. MCL 750.7. When any act or omission, not a felony, is punishable according to law, by a fine, penalty or forfeiture, and imprisonment, or by such fine, penalty or forfeiture, or imprisonment, in the discretion of the court, such act or omission shall be deemed a misdemeanor. MCL 750.8.

Consideration was given to finding that MCL 750.92 dictates that Respondent's crime was a misdemeanor. Application of MCL 750.92 was rejected and MCL 333.7407a (3) is deemed to be controlling. The applicable controlling statute reads as follows:

Except as otherwise provided in section 7416, a person who violates this section is guilty of a crime punishable by the penalty for the crime he or she attempted to commit, or by the penalty for the crime he or she solicited, induced, or intimidated another person to commit.

In other words, MCL 333.7407a (3) dictates that convictions for attempted crimes involving controlled substances are punishable for the penalty as stated in the applicable statute. The penalty for Respondent's underlying crime is a felony; thus, the attempt of the crime is also a penalty.

The MDHHS case summary alleged a third drug-related conviction. During the hearing, MDHHS testimony conceded the third eviction was for a probation violation and not relevant to establishing a third drug-related felony.

It is found that MDHHS established that Respondent was convicted of multiple drug-related felonies. The analysis will proceed to determine if any OI occurred.

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, pp. 136-144) from [REDACTED]. Respondent's FAP benefit issuances totaled [REDACTED].

Presented reporting documents and benefit issuance history 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 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 [REDACTED] in FAP benefits during the alleged OI period. It is found that Respondent received an OI of [REDACTED] in FAP benefits. MDHHS will be denied an OI for the [REDACTED] difference between Respondent's issuances during the OI period and the amount of OI alleged by MDHHS. 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 application for FAP benefits (Exhibit 1, pp. 11-26). Respondent's handwritten signature was dated [REDACTED]. Respondent checked "No" to a question asking, "Has anyone ever been convicted of a drug-related felony occurring after [REDACTED]?" (see Exhibit 1, p. 24).

MDHHS presented Respondent's application for FAP benefits (Exhibit 1, pp. 43-62). Respondent's handwritten signature was dated [REDACTED]. Respondent checked "No" to a question asking, "Has anyone ever been convicted of a drug-related felony occurring after [REDACTED]?" (see Exhibit 1, p. 60). Respondent also checked "No" to a follow-up question asking if anyone was convicted more than once.

MDHHS presented Respondent's application for FAP benefits (Exhibit 1, pp. 63-93). Respondent's electronic signature was dated [REDACTED]. Respondent answered "No" in response to the question, "Convicted of a Drug Felony?" (see Exhibit 1, p. 67).

MDHHS presented Respondent's application for FAP benefits (Exhibit 1, pp. 94-121). Respondent's electronic signature was dated [REDACTED]. Respondent answered "Yes" in response to the question, "Convicted of a Drug Felony?" Respondent answered "No" in response to a question asking, "Convicted of a Drug Felony more than once?" (see Exhibit 1, pp. 97-98).

The presented reporting documents contained boilerplate language stating the client's signature was certification, subject to perjury, that all reported information on the document 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.

Presented evidence established that Respondent misreported information by reporting an absence of drug-felony convictions since [REDACTED]. Generally, a client's written statement which contradicts known facts resulting in an OI 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 received an OI of [REDACTED] in FAP benefits for the period from [REDACTED]. The MDHHS request to establish a [REDACTED] overissuance against Respondent is **PARTIALLY APPROVED**.

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] for the alleged OI exceeding [REDACTED]. The MDHHS request to establish a [REDACTED] overissuance against Respondent is **PARTIALLY DENIED**.

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 over-issued FAP benefits for the period from [REDACTED]. The MDHHS request to establish a 12-month disqualification against Respondent is **APPROVED**.

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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]