



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: August 1, 2017
MAHS Docket No.: [REDACTED] 17-003027
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. On [REDACTED] Respondent was arrested which led to a conviction for a drug-related felony on [REDACTED]
3. Respondent committed a separate drug-related felony after [REDACTED]

4. On [REDACTED], MDHHS requested a hearing to establish Respondent received an OI of [REDACTED] in FAP benefits from [REDACTED] based on Respondent committing multiple drug-related offenses after [REDACTED]
5. MDHHS also requested a hearing to establish that Respondent committed an IPV by failing to report multiple drug-related offenses after [REDACTED]

[REDACTED] 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-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 [REDACTED] *Id.*, p. 2.

MDHHS presented Respondent's Internet Criminal History Access Tool (ICHAT) history (Exhibit 1, pp. 10-13). ICHAT is a database of public Michigan criminal histories. MDHHS alleged 2 of Respondent's previous crimes were relevant.

Presented ICHAT documentation indicated Petitioner was arrested on [REDACTED] [REDACTED]. A subsequent criminal conviction for "ATTEMPT- FELONY CONTROLLED SUBSTANCE- DEL/MFG (COCAINE, HEROIN OR ANOTHER NARCOTIC) LESS

THAN 50 GRAMS” was indicated. The crime is a drug-related felony under MCL 333.7401(2)(a)(iv).

Presented ICHAT documentation indicated Petitioner was arrested on September 1, 1994. A conviction dated November 21, 1996, for “ATTEMPT- FELONY CONTROLLED SUBSTANCE- DEL/MFG (COCAINE, HEROIN OR ANOTHER NARCOTIC) LESS THAN 50 GRAMS” was indicated. The crime is a drug-related felony under MCL 333.7401(2)(a)(iv).

Both of Respondent’s drug-related felony convictions occurred after [REDACTED]. MDHHS contended the conviction dates are controlling when determining whether a client is disqualified from receiving FAP benefits. The MDHHS contention is erroneous.

MDHHS policy clearly states that *offenses* must occur after [REDACTED] not convictions. Offenses presumably refers to the date of the crime.

It can be deduced that Respondent could not have been arrested for a crime he had not yet committed. Thus, Respondent’s conviction dated [REDACTED], cannot count as a drug felony because Respondent was arrested before [REDACTED].

It is found that MDHHS established that Respondent committed only one countable drug-related felony. MDHHS sensibly did not attempt to contend that an OI was justified based on Respondent’s single countable drug-related felony. Without countable multiple drug-related felonies, MDHHS cannot establish an OI of FAP benefits. The analysis will proceed to determine if Respondent committed 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 various reporting documents from Respondent (see Exhibit 1, pp. 14-41). The documents verified that Respondent misreported to MDHHS having no drug-felony convictions. Technically, Respondent misreported information to MDHHS. Misreporting is generally indicative of fraud. Misreporting, under the present case's circumstances, cannot be an IPV unless an OI is established. It has already been found that MDHHS failed to establish an OI due to Respondent's single countable drug-related felony history. Without establishment of an OI, an IPV cannot follow. It is found that MDHHS failed to establish that Respondent committed an IPV.

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 received an OI of [REDACTED] in over-issued FAP benefits from [REDACTED]. It is further found that MDHHS established failed to establish that Respondent committed an IPV. The MDHHS request to establish an overissuance and a 12-month disqualification against Respondent is **DENIED**.

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

Petitioner

[REDACTED]

DHHS

[REDACTED]

Respondent

[REDACTED]