



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: September 7, 2017
MAHS Docket No.: 17-004363
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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 September 6, 2017, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by ██████ ██████ Regulation Agent, with the Office of Inspector General. Respondent did not appear.

ISSUES

1. The first issue is whether MDHHS established Respondent received an overissuance (OI) 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 and Respondent's spouse were ongoing Food Assistance Program (FAP) benefit recipients.
2. Respondent's spouse was convicted of multiple drug-related felonies occurring between ██████████.

3. Respondent did not intentionally misreport to MDHHS her spouse's 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] [REDACTED] [REDACTED] [REDACTED] due to an 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], (Exhibit 1, pp. 5-6) alleging Respondent received \$ [REDACTED] in over-issued FAP benefits from [REDACTED] [REDACTED] [REDACTED] [REDACTED]. MDHHS alleged the OI was based on Respondent's spouse'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 August 22, 1996. *Id.*, p. 2.

MDHHS presented State of Michigan search documents (Exhibit 1, pp. 46-47). The documents stated Respondent's spouse was convicted of "CONTROLLED SUBSTANCE- DELIVERY/MANUFACTURE (NARC/COCAINE) LESS 50 GRAMS." An offense date of [REDACTED], was listed. The conviction was not factored because the offense occurred before August 22, 1996.

MDHHS presented State of Michigan court documents (Exhibit 1, pp. 48-49). The documents stated Respondent's spouse was convicted of "CONTROLLED SUBSTANCE- DELIVERY/MANUFACTURE (NARC/COCAINE) LESS 50 GRAMS." An offense date of [REDACTED], was listed. The crime is a felony under MCL 333.7401(2)(a)(iv).

MDHHS presented State of Michigan court documents (Exhibit 1, pp. 50-51). The court documents stated Respondent's spouse was convicted of "CONTROLLED SUBSTANCE- DELIVERY/MANUFACTURE (NARC/COCAINE) LESS 50 GRAMS." An offense date of [REDACTED], was listed. The crime is a felony under MCL 333.7403(2)(a)(iv).

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, pp. 105-109) from [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Various FAP benefit issuances to Respondent from the alleged OI period were listed.

MDHHS presented an Issuance Summary (Exhibit 1, pp. 52-54) and corresponding FAP-OI budgets from the alleged OI period (Exhibit 1, pp. 55-104). The budgets properly factored previous FAP issuances to Respondent. The budgets appeared to correctly calculate Respondent's FAP eligibility with Respondent's spouse as a disqualified group member. A total OI of \$ [REDACTED] was calculated for the alleged OI period.

Presented evidence established Respondent's spouse was convicted of multiple drug-related felonies which would have disqualified him from FAP eligibility during the alleged OI period. 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 application for State Emergency Relief benefits (Exhibit 1, pp. 10-27). Respondent's electronic signature was dated [REDACTED]. Respondent listed herself and her spouse among the household members. Concerning her spouse, Respondent answered "No" in response to the question, "Convicted of a Drug Felony?" (See Exhibit 1, p. 17). The application did not ask if Respondent's spouse was convicted of multiple drug felonies.

MDHHS presented Respondent's Redetermination for FAP benefits (Exhibit 1, pp. 28-33). Respondent's handwritten signature was dated [REDACTED]. Respondent listed herself and her spouse among the household members. Respondent checked "No" in response to a question asking, "Has anyone ever been convicted of a drug-related felony occurring after August 22, 1996?" Respondent also checked "No" to a follow-up question asking if anyone was convicted more than once (See Exhibit 1, p. 32).

MDHHS presented Respondent's Redetermination for FAP benefits (Exhibit 1, pp. 34-39). Respondent's handwritten signature was dated [REDACTED]. Respondent listed herself and her spouse among the household members. Respondent checked "No" in response to a question asking, "Has anyone ever been convicted of a drug-related felony occurring after August 22, 1996?" (See Exhibit 1, p. 38). Respondent did not answer a question asking if anyone was convicted more than once.

MDHHS presented Respondent's Redetermination for FAP benefits (Exhibit 1, pp. 40-45). Respondent's handwritten signature was dated [REDACTED]. Respondent listed herself and her spouse among the household members. Respondent did not answer questions asking if anyone in the household was convicted of a drug-felony or if that person was convicted more than once.

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 her spouse had an absence of drug-felony convictions since 1996. Generally, a client's written statement which contradicts known facts resulting in an OI is clear and convincing evidence of an IPV.

It is reasonably possible that Respondent knew her spouse at the time of his drug convictions and was aware of his convictions. If not, it is reasonably possible that Respondent's spouse informed Respondent of his drug-felony convictions regardless of when he and Respondent first met. In either scenario, a finding that Respondent misreported information would be supported. Such a finding is further supported by Respondent's absence from the hearing and failure to claim otherwise.

It is alternatively possible that Respondent's spouse never informed Respondent of having multiple drug-felony convictions. In such a scenario, it cannot be stated that Respondent intentionally misreported information. Inferences can be made based on presented evidence.

Reporting documents verified that Respondent reported having a child born in [REDACTED] from a father who was not Respondent's spouse. Reporting documents also listed a child born to Respondent in [REDACTED]; Respondent's spouse was the reported father of this child.

Respondent's spouse's most recently verified drug-felony conviction occurred in [REDACTED]. Thus, presented evidence was suggestive that Respondent did not know her spouse at the time of his drug convictions. Drug convictions are the type of information that a spouse would not necessarily share with a spouse; thus, it is also reasonably possible that Respondent was unaware of her spouse's convictions when completing reporting documents. The possibilities are plausible enough to find that MDHHS did not meet the clear and convincing standard required to establish that an IPV occurred.

It is found that Respondent did not intentionally misreport information to MDHHS. Without an intent to misreport, an IPV cannot follow. It is found that MDHHS failed to establish an IPV by Respondent.

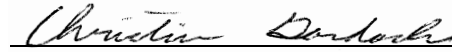
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent received an OI of \$ [REDACTED] in FAP benefits for the period 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

an OI of FAP benefits due to unreported drug-related felonies. The MDHHS request to establish that Respondent committed an IPV is **DENIED**.

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

DHHS

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]