



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: September 12, 2017
MAHS Docket No.: 17-004915
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 September 11, 2017, 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

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 was an ongoing Food Assistance Program (FAP) benefit recipient.
2. Respondent committed and was convicted of multiple drug-related felonies 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], (Exhibit 1, pp. 5-6) alleging Respondent received \$ [REDACTED] in over-issued FAP benefits from [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 August 22, 1996. *Id.*, p. 2.

MDHHS presented a Case Register of Actions (Exhibit 1, pp. 46-54) from a State of Michigan county court. The court document indicated Respondent was convicted of "CONTR SUB DEL LESS 50GRAM" The crime is a drug-related felony under MCL 333.7401(2)(a)(iv). An offense date of [REDACTED], was indicated.

MDHHS presented a Case Register of Actions (Exhibit 1, pp. 55-59) from a State of Michigan county court. The court document indicated Respondent was convicted of "CONTRL SUB POSSESS < 25 GRM." The crime is a drug-related felony under MCL 333.7403(2)(a)(v). An offense date of [REDACTED], was indicated.

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, pp. 63-66) from [REDACTED]. FAP benefit issuances to Respondent 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. 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. 10-39). Respondent's electronic signature was dated [REDACTED]. Respondent answered

“Yes” in response to the question, “Convicted of a Drug Felony?” (See Exhibit 1, p. 14). A question asking if Respondent was convicted more than once was not apparent.

Various case comments on Respondent’s case (Exhibit 1, pp. 60-61) were presented. Comments dated [REDACTED], stated Respondent reported only having one drug-related felony; the felony was reported to have occurred in [REDACTED]. Based on the proximity of the comment to Respondent’s application date, the comment is presumed to have been made as part of a FAP-benefit interview with Respondent.

MDHHS alleged that the comment made by Respondent’s specialist was evidence of fraud by Respondent. Consideration was given to rejecting the case comment as a hearsay statement.

It is acknowledged that MDHHS could have presented testimony from the specialist who made the case comment; the testimony could have validated the comment. It is also acknowledged that MDHHS could have avoided potential hearsay problems had the presented MDHHS application asked Respondent whether she had been convicted of multiple drug felonies. Despite some concerns about the admissibility of the comment made by Respondent’s specialist, it is deemed to be sufficiently reliable, and therefore admissible.

The comment was not one that was likely to be misinterpreted by a specialist. It is also notable that Respondent received notice of the comment yet did not appear for the hearing to rebut the accuracy of the comment. Most notably, the comment was consistent with a written statement made later by Respondent.

MDHHS presented Respondent’s Redetermination for FAP benefits (Exhibit 1, pp. 40-45). Respondent’s handwritten signature was undated but a date stamp indicated Respondent submitted the document to MDHHS on [REDACTED]. Respondent answered “Yes” in response to the question, “Has anyone ever been convicted of a drug-related felony occurring after August 22, 1996?” Respondent checked “No” to the follow-up question asking if anyone was convicted more than once. (See Exhibit 1, p. 44).

The presented reporting document 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 1996. 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 one-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 \$ [REDACTED] in over-issued FAP benefits for the period from [REDACTED] [REDACTED]. The MDHHS request to establish an overissuance and a 12-month disqualification 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

Petitioner

[REDACTED]

DHHS

[REDACTED]

Respondent

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]