



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 7, 2017  
MAHS Docket No.: 17-009344  
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 6, 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 appeared and was not represented.

**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 did not intentionally misreport 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.

### **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 Judgment of Sentence (Exhibit 1, p. 47) signed by a State of Michigan county judge or magistrate. The court document indicated Respondent was convicted of "CONTRL SUB POSSESS < 25 GRM" on [REDACTED]. The crime is a drug-related felony under MCL 333.7403(2)(a)(v).

MDHHS presented a Judgment of Sentence (Exhibit 1, p. 54) signed by a State of Michigan county judge or magistrate. The court document indicated Respondent was

convicted of "CONTRL SUB POSSESS < 25 GRM" on [REDACTED]. The crime is a drug-related felony under MCL 333.7403(2)(a)(v).

MDHHS presented Respondent's FAP benefit issuance history (Exhibit 1, pp. 57-60) 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. 10-25). 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). The application was not evidence of a fraudulent intent by Respondent.

MDHHS presented Respondent's application for FAP benefits (Exhibit 1, pp. 26-39). Respondent's electronic signature was dated [REDACTED]. Respondent answered "Yes" in response to the question, "Convicted of a Drug Felony?" Respondent answered "No" to a follow-up question asking if convicted more than once (See Exhibit 1, p. 30).

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 did not answer questions asking if anyone in the household was convicted of a drug-felony or if he/she were convicted more than once (See Exhibit 1, p. 44). Leaving questions blank is not insightful into determining if Respondent committed fraud.

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.

MDHHS presented three different reporting documents from Respondent. Only the electronically submitted application dated [REDACTED] [REDACTED] [REDACTED], was evidence of a misreporting by Respondent. It is debatable whether Respondent's one-time failure to report multiple drug-related felonies is clear and convincing evidence of fraud.

Respondent testified that he always reported truthful information to MDHHS. Respondent testified he is computer illiterate and that he did not complete any of the electronic applications. Respondent's testimony implied that a MDHHS staff-person erroneously answered electronic application questions from Respondent's verbal answers.

Respondent's testimony was unverified. Respondent's testimony would have been more credible if Respondent's application was completed by an authorized representative or if a need for an authorized representative was reported in the application. Respondent signed his application and did not list a need for an authorized representative.

MDHHS could have better established a fraudulent intent by Respondent if certain actions had been undertaken. Respondent's application from [REDACTED] could have asked Respondent if he was convicted of more than one drug-related felony; inexplicably, there was no such question. In [REDACTED] Respondent's specialist could have required Respondent to complete questions on the Redetermination; again inexplicably, no such requirement was imposed.

A single instance of inaccurate answer on an application which is not an obvious factor to FAP eligibility which may have been erroneously entered by MDHHS staff is not deemed to be clear and convincing evidence of a fraudulent intent. Accordingly, 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.

It should be noted that a finding that MDHHS failed to establish an IPV does not necessarily qualify Respondent for FAP eligibility. As of the date of this decision, MDHHS imposes a lifetime disqualification for clients with multiple drug-related felonies since August 22, 1996.

### **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]