



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON  
DIRECTOR

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

Date Mailed: April 3, 2018  
MAHS Docket No.: 17-013839  
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, 42 CFR 431.230(b), 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 March 28, 2018, from Detroit, Michigan. MDHHS was represented by [REDACTED], regulation agent with the Office of Inspector General (OIG). Respondent appeared and was not represented.

**ISSUES**

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that MDHHS is entitled to recoup?
2. Did MDHHS establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving benefits for one year?

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On or about February 14, 2008, Respondent was convicted of a crime under MCL 801.263(2). The crime was for smuggling Oxycodone into a jail. The associated paperwork listed the crime as "JAIL- PRISNR POSS CONTRABN" (see Exhibit A, pp. 81-82).

2. On or about January 16, 2014, MDHHS received Respondent's application requesting FAP benefits (see Exhibit A, pp. 11-34). Respondent checked "No" in response to the question, "Has anyone ever been convicted of a drug-related felony occurring after August 22, 1996?" (see Exhibit 1, p. 52).
3. On or about March 20, 2014, Respondent was convicted of "CONTRL SUB POSSESS < 25 GRM" (see Exhibit A, pp. 86-87).
4. On or about October 2, 2014, MDHHS received Respondent's application requesting FAP benefits (see Exhibit A, pp. 35-54). Respondent checked "Yes" in response to the question, "Has anyone ever been convicted of a drug-related felony that occurred after August 22, 1996?" and listed a drug felony from May 2014. Respondent also checked "No" to a follow-up question asking if convicted more than once.
5. On or about December 8, 2014, Respondent signed a Redetermination (Exhibit A, pp. 55-60). The document listed Respondent's reporting of a single drug felony from May 2014.
6. On or about March 12, 2015, MDHHS received Respondent's application requesting FAP benefits (see Exhibit A, pp. 61-80). Respondent checked "Yes" in response to the question, "Has anyone ever been convicted of a drug-related felony that occurred after August 22, 1996?" Respondent also checked "No" to a follow-up question asking if convicted more than once.
7. Respondent did not intentionally misreport drug felonies based on his sincere belief that his conviction from 2008 involved contraband, but not controlled substances.
8. From October 2014 through January 2016, Respondent received an OI of \$ [REDACTED] in FAP benefits for a group of one person. \$ [REDACTED] of the FAP benefits were later expunged.
9. On September 1, 2017, MDHHS requested a hearing to establish Respondent received an OI of \$ [REDACTED] in FAP benefits from October 2014 through January 2016 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. An Intentional Program Violation Repayment Agreement dated September 1, 2017, (Exhibit A, pp. 5-6) alleged Respondent received \$ [REDACTED] in over-issued FAP benefits from October 2014 through January 2016. MDHHS contended the OI was based on Respondent's receipt of FAP benefits during a period Respondent was disqualified due to 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, pp. 81-82). A crime of "JAIL-PRISNR POSS CONTRABN" was listed. A code of "G" indicating a guilty plea on February 14, 2008, was listed. The crime was associated with "MCL 801.2632". The relevant statute reads as follows:

**801.263 Prohibited acts; alcoholic liquor or controlled substance.**

Sec. 3.

(1) Except as provided in section 4, a person shall not bring into a jail, a building appurtenant to a jail, or the grounds used for jail purposes; sell or furnish to a prisoner; or dispose of in a manner that allows a prisoner access to an alcoholic liquor or controlled substance, any alcoholic liquor or controlled substance.

(2) Except as provided in section 4, a prisoner shall not possess or have under his or her control any alcoholic liquor or controlled substance.

MCL 801.265 provides that a person who violates this act (Act 7) is guilty of a felony. A plain statutory reading verifies that Respondent was convicted of a felony. Respondent contended that his crime was not a drug felony.

Respondent testified that while incarcerated, he was caught bringing Oxycodone from the outside. Respondent testified he had a prescription for the substance. Respondent testified he should not have did what he did, but insisted it was not a drug-related felony.

The Bridges Program Glossary contains no definition of "controlled substances". BEM 203 does not define "controlled substances". In the silence of MDHHS policy, the statutory definition of "controlled substance" will be accepted.

MCL 801.261 defines "controlled substance" as "... a drug, substance, or immediate precursor in schedules 1 to 5 of part 72 of Act No. 368 of the Public Acts of 1978..." Oxycodone is a drug listed under Section 2 (see MCL 333.7214).

The evidence established that Respondent's 2008 felony for possession of Oxycodone was a countable felony towards disqualification from FAP benefits. Respondent's later controlled substance felony disqualified Respondent from receipt of FAP benefits.

MDHHS presented an Amended Judgment of Sentence (Exhibit A, pp. 86-87). The document listed that Respondent pled guilty on March 20, 2014, to a crime of "CONTRL SUB POSSESS < 25 GRM". The crime is a controlled substance felony under MCL 333-.7403(2)(a)(5).

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.

MDHHS presented Respondent's FAP issuance history (see Exhibit A, pp. 88-91). The documents verified issuances totaling \$ [REDACTED] to Respondent over the period from October 2014 through January 2016. Expungements totaling \$ [REDACTED] (see Exhibit A, p. 92) were also listed.

Presented evidence established Respondent was convicted of multiple controlled substance felonies which should have disqualified Respondent from FAP eligibility during the alleged OI period. MDHHS established Respondent received \$ [REDACTED] in FAP benefits during the alleged OI period. MDHHS reduced the OI amount by \$ [REDACTED] in FAP benefits that Respondent received but were later expunged. It is found that MDHHS established that Respondent is responsible for an OI of \$ [REDACTED]. 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 has policy to address misreporting. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015), p. 8.

Respondent's testimony implied that he would have reported the felony from 2008 if he believed that it involved drugs. Respondent emphasized that the earlier felony involved possession of contraband rather than a controlled substance. Respondent's testimony further implied that he would have reported to MDHHS any felonies that he thought that he was required to report. Respondent's testimony was consistent with reporting documents which established that Respondent consistently reported to MDHHS his undisputed drug felony from 2014. Respondent's testimony was also consistent with sentencing documents which listed the name of his earlier crime as involving "contraband" and not a "controlled substance". Even MDHHS did not appear to be certain if Respondent's earlier crime involved a controlled substance as policy experts had to be emailed for clarification (see Exhibit A, pp. 83-84).

MDHHS contended that Respondent should have informed MDHHS of his earlier felony. MDHHS further contended that had Respondent reported the earlier felony, MDHHS could have investigated sooner whether his earlier felony disqualified him from receiving FAP benefits. MDHHS' contentions are accurate; however, Respondent's willfulness is better addressed by his sincere beliefs under the evidence, not what he should have done.

The evidence established that Respondent misreported drug felonies. The evidence did not establish that Respondent's misreporting was willful nor with a fraudulent intent. Thus, the evidence did not establish by a clear and convincing standard that Respondent committed an IPV.

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.*

As MDHHS did not establish by a clear and convincing standard that Respondent committed an IPV, a disqualification based on an IPV may not follow. Thus, Respondent may not impose a one-year disqualification against Respondent for committing an IPV. It should be noted that this finding does not impact whether MDHHS may impose other disqualifications against Respondent, in particular, a disqualification for multiple controlled substance felonies.

### **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 \$ [REDACTED] in over-issued FAP benefits for the period from October 2014 through January 2016. The MDHHS request to establish an overissuance against Respondent 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 due to unreported drug-related felonies. The MDHHS request to establish that Respondent committed an IPV is **DENIED**.

CG/



**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]  
[REDACTED]

**Respondent**

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